

PRACTICE and PROCEDURE MANUAL

of

JUDGES and MAGISTRATE JUDGES

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF TENNESSEE

Nashville, Tennessee

Prepared by:

**The Federal Court Committee
Nashville Bar Association**

and

The United States District Court

**Revised: June, 1999
(Fourth Edition)**

TABLE OF CONTENTS

PREFACE

OUTLINE OF PRACTICE AND PROCEDURE MANUAL

CHIEF JUDGE ROBERT L. ECHOLS

JUDGE TODD J. CAMPBELL

JUDGE ALETA A. TRAUGER

JUDGE WILLIAM J. HAYNES, JR.

SENIOR JUDGE THOMAS A. WISEMAN, JR.

SENIOR JUDGE JOHN T. NIXON

SENIOR JUDGE THOMAS A. HIGGINS

MAGISTRATE JUDGE JULIET E. GRIFFIN

MAGISTRATE JUDGE JOE B. BROWN

APPENDICES

Appendix 1 : JUDGE HIGGINS

Case Management Checklists and
Form Scheduling Orders

Appendix 2 : SENIOR JUDGE WISEMAN

Judging the Expert, 55 Ohio St. L. J. 1105 (1994)

Appendix 3 : MAGISTRATE JUDGE HAYNES

Pattishall Order

PREFACE

BOOKLET OF INDIVIDUAL PRACTICES AND PROCEDURES OF JUDGES AND MAGISTRATE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

PUBLISHED BY:

FEDERAL COURT COMMITTEE,
NASHVILLE BAR ASSOCIATION

AND

UNITED STATES DISTRICT COURT CLERK'S OFFICE

During the past few years, the Federal Court Committee of the Nashville Bar Association has conducted more or less annual meetings with each of the United States District Court Judges for Middle Tennessee. The purpose of those meetings as originally envisioned by Judge Wiseman and the committee was to give the judges feedback from the bar. Over time, the interviews were expanded to include magistrate judges. The subject matter also evolved to add a second purpose, eliciting an articulation of particular practices and procedures of individual judges and magistrate judges, with some discussion and feedback from the committee as representative of the bar to those practices and procedures.

It has long been felt that a book of the practices and procedures content of the meetings should be done. This was primarily for the benefit of attorneys who do not regularly practice in these courts, but also as a service to the bench and bar generally.

The committee, the district judges and the magistrates judges agree on four points with reference to this booklet.

First, it is not a substitute for a thorough reading and grasp of the Local Rules of Court and the Local Rules for Magistrate Judge Proceedings.

Second, the primary purpose of this booklet is to assist attorneys who do not regularly practice in these courts, by giving them, hopefully, useful information, beyond a grasp of the Local Rules.

Third, this booklet is not intended to replace the regular feedback communication between the bar, the committee, and our judges.

Fourth, this booklet is not a final document. It is contemplated and assumed that input from the bar at large, changes in personnel in these judicial positions over time, and development of new or amended practices and procedures to meet particular problems or situations, will require regular updating of the booklet.

Please remember that this booklet is by nature general and is not intended to supersede any rule or procedure of any judge in any particular case. The judges always have the right and duty to handle any case in a different way depending on the facts of that case.

We on the Federal Court Committee hope that you will find this booklet useful. Please let the committee know of any errors and feel free to suggest changes to make it even more useful.

**FORMAT OUTLINE OF PRACTICE AND PROCEDURE MANUAL
FOR FEDERAL JUDGES AND MAGISTRATE JUDGES
FOR THE MIDDLE DISTRICT OF TENNESSEE**

I. Name and Brief Biography

II. Preliminary General Matters

- A. Scheduling
- B. Correspondence with Court
- C. Telephone Conference with the Court
- D. Telephone Conference with Law Clerks
- E. Pro Hac Vice Admission
- F. Motion to Ascertain Status

III. Pretrial Matters - Civil Cases

- A. Scheduling Orders
- B. Continuances and Extensions

- 1. General Policy
 - 2. Requests

C. Pretrial Motions

- 1. Referral to Magistrate Judge
 - 2. Oral Argument
 - 3. Briefs
 - 4. Chamber Copies of Filings
 - 5. Proposed Orders

D. Discovery

- 1. Discovery Period and Extensions
 - 2. Interrogatory Responses
 - 3. Resolution of Discovery Disputes
 - 4. Confidentiality Agreements
 - 5. Expert Witnesses

E. Settlement

- 1. Settlement Conferences in Jury Cases
 - 2. Settlement Conferences in Non-Jury Cases

F. Pretrial Briefs

- 1. Form
 - 2. Scope in Non-Jury Case
 - 3. Scope in Jury Case

G. Injunctions

1. Scheduling
2. Expedited Discovery

IV. Pretrial Matters - Criminal Cases

- A. Suppression Hearings
- B. Motions
- C. Pretrial Conferences

V. Trial Procedure

- A. Scheduling
- B. Out-of-Town Parties, Witnesses, or Attorneys
- C. Motions in Limine
- D. Courtroom Decorum
- E. Voir Dire
- F. Note Taking by Jurors
- G. Opening Statements

1. Length
2. Use of Exhibits

- H. Side Bar Conferences
- I. Videotaped Testimony
- J. Deposition Reading
- K. Exhibits
- L. Motions for Judgment as a Matter of Law
- M. Proposed Jury Instructions and Verdict Forms
- N. Proposed Findings of Fact and Conclusions of Law
- O. Offers of Proof
- P. Jury Deliberation

1. Copy of Instructions
2. Access to Exhibits
3. Access to Transcript of Testimony or Videotaped Testimony
4. Availability of Counsel
5. Taking the Verdict and Special Interrogatories
6. Polling the Jury
7. Interviewing the Jury

VI. Sentencing in Criminal Cases

- A. On Guilty Pleas
- B. After Verdict

VII. Other Comments

PRACTICE AND PROCEDURE MANUAL

U. S. DISTRICT JUDGE ROBERT L. ECHOLS

I. Brief Biography

Judge Echols was appointed United States District Judge for the Middle District of Tennessee in April 1992 by President George Bush. He became Chief Judge of the district in August 1998. After graduating from Rhodes College with a B.A. degree in 1962, he attended law school at the University of Tennessee and received his J.D. degree in 1964. He served as law clerk for U.S. District Judge Marion S. Boyd in Memphis, Tennessee, from 1965-66, and as a legislative assistant for Congressman Dan Kuykendall in Washington, D.C., from 1967-1969. He was employed as an associate and later as a partner in the law firm of Bailey, Ewing, Dale & Conner in Nashville, Tennessee, from 1969-1972. In 1972 he was one of the founders of the law firm of Dearborn & Ewing in Nashville where he served as partner until his appointment to the bench.

II. Preliminary General Matters

A. Scheduling

The scheduling of court time is handled by Marcia Knoch, Judge Echols' courtroom deputy, in coordination with Vicki Kinkade, Judge Echols' secretary. Pretrial conferences, status management conferences, pleas, and sentencings are generally conducted on Mondays. These hearings can also be conducted on Fridays if the trial scheduled for that week has completed or is in jury deliberation. Judge Echols will sometimes conduct a hearing at the noon hour, in the late afternoons, or in the mornings at 8:00 or 8:30. Each hearing is set at a specific time and there is no double setting. Typically there are not too many interruptions in a trial nor are there attorneys waiting in the hall for their hearing to begin. A regular schedule is maintained.

B. Correspondence with Court

Judge Echols prefers that all matters be communicated to the Court in the form of pleadings, notices, memoranda, and briefs. Letters are not preferred. All communications should be served on opposing counsel. Correspondence received goes to the Clerk's Office for filing in the case file and is a matter of public record.

C. Telephone Conference with Court

Although Judge Echols does not suggest that pretrial conferences be conducted by telephone, he will accommodate out-of-town lawyers when an economic burden exists. Judge Echols does, however, invite lawyers to jointly communicate with the Court by telephone when necessary, and he is accessible by telephone to resolve discovery disputes if the lawyers feel the Judge can be helpful. Arrangements for such telephone conferences should be made through his courtroom deputy or his secretary, and lawyers for both sides must be on the phone.

D. Telephone Conference with Law Clerk

Telephone conferences with law clerks are discouraged.

E. Pro Hac Vice Admission

Judge Echols grants motions for admission pro hac vice if accompanied by a certificate of good standing, as long as they are associated by local counsel, but Local Rule 1(d)(1) seems to suggest that an out-of-town lawyer can certify his own good standing in another state. Local counsel's signature on the pleadings means that he or she is prepared to prosecute the case, but Judge Echols realizes that often times the out-of-town lawyer is the lead counsel. However, local counsel should take this commitment very seriously. Judge Echols is disappointed when there is non-compliance with the rules, case management orders, agreements of counsel, or Court orders and the local counsel merely places the blame on the foreign counsel. There is a serious and significant responsibility placed on local counsel to ensure that the rules, agreements, and orders of the Court are fully met.

III. Pretrial Matters - Civil Cases

A. Scheduling/Case Management Orders

Judge Echols refers all new cases to the magistrate judges for case management purposes.

B. Continuances and Extensions

The general policy is to comply with the rules. There are no automatic continuances or extensions, and the Judge expects compliance with the deadlines set in case management orders and other orders of the Court. "Gentlemen's agreements" between lawyers to alter dates or requirements are prohibited without notification and approval of the Court. Judge Echols expects a lawyer requesting a continuance or extension to discuss the matter with the other attorney before presenting a request to the Court. All requests for continuances or extensions should be documented in the court record by filing a motion and a brief supporting memorandum giving a detailed explanation of the grounds for the request, along with a proposed agreed order. The proposed order should specify a date certain for the extension or continuance. Parties must be accountable to the Court and to each other for deadlines and commitments set forth in Court orders. Judge Echols will address requests for extensions or continuances which affect (1) trial dates or (2) responses to dispositive motions. Any other requests for extensions or continuances will be addressed by the magistrate judge (case manager).

C. Pretrial Motions

1. Referral to Magistrate Judge

Pretrial motions are addressed by the magistrate judges as the case managers. Pursuant to Local Rule 11(f)(1)(a), all dispositive motions are resolved by Judge Echols.

2. Oral Argument

Oral argument is generally permitted if lawyers request and when Judge Echols believes the arguments will aid in the understanding of the issues, the applicable law, and/or the positions of the parties. He sometimes declines oral argument when he believes it would not be helpful for a determination of the issues before the Court.

3. Briefs

Pretrial briefs are required in a jury case. They are not required in a non-jury case. In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial and not file pretrial briefs. If there is a critical issue that an attorney feels a need to address, he/she and opposing counsel are permitted to file a brief on that particular critical issue before the trial. Findings of fact and conclusions of law are submitted after the transcript is filed (if a transcript is ordered). Judge Echols has no policy to cite to the record if no transcript is filed; however, citations to the record are more persuasive and helpful to the Court.

Briefs or memoranda of law are required to be filed as separate documents in support of all motions. Attorneys should strictly comply with Local Rule 8(b)(7) when filing motions for summary judgment. Affidavits, depositions, and/or exhibits filed in support of summary judgment motions must relate to admissible evidence. If depositions are filed, attorneys should designate the specific pages and lines of the testimony which support their respective positions.

4. Chamber Copies of Filings

Judge Echols does not want extra copies of filings.

5. Proposed Orders

Proposed orders are helpful, but many times they are drafted in a biased manner. Some attorneys tend to take on an air of advocacy in drafting orders rather than reflecting what is agreed and what is to be done. Judge Echols welcomes proposed orders, but usually does not require them unless requested. If the proposed order is not agreed upon, he would like to know what portion is disputed.

6. Motions to Ascertain Status

Judge Echols has no problem with attorneys filing a motion to ascertain status of a case or a pending motion. Short of filing a motion to ascertain status, the attorneys may call Marcia Knoch to inquire about the status of a particular case or motion. He believes the attorneys have a right to inquire about the status of their case, especially if they are waiting for some action to be taken by the Court.

D. Discovery

1. Discovery Period and Extensions

See III B. above.

2. Interrogatory Responses

Due in thirty days. Extensions are granted by case manager only, not by side deals between attorneys. The Court cannot monitor or police side deals, which often lead to discovery fights. Minor pretrial extensions are normally granted if both parties agree. However, any deviations from rules or Court orders should be done by motion and an agreed order.

3. Resolution of Discovery Disputes

Discovery disputes are normally resolved by the case manager. However, if Judge Echols is involved, discovery disputes can be resolved by filing an appropriate motion, meeting informally in chambers, or by a joint telephone conference. Judge Echols often deals with discovery disputes via telephone conferences either early in the morning before court begins, at the noon hour, or in late afternoon. The attorneys can often work out these problems by simply communicating with each other.

4. Confidentiality Agreements

Judge Echols usually accepts if parties agree as to terms, unless these are policy reasons not to put under seal. He resolves these issues on a case-by-case basis. They are considered under seal until he releases the information.

5. Expert Witnesses

Disclosure is mandatory under Fed. R. Civ. P. 26(a)(2). Pursuant to Local Rule 12(c)(6)(c), the judge or case manager may require that the expert's trial testimony be reduced to writing in the form of a narrative statement. This procedure frequently saves time, but it usually produces dull testimony. Experts may supplement their statements by models, videos, or overheads as long as the other side is informed in advance.

Attorneys should be careful to ensure that the required report of the testifying expert covers all subjects and opinions to be offered at trial. The purpose of the report is to alert the opposing attorney of all the opinions of the expert, the reasons upon which the opinions are based, all data, tests, or information considered by the expert in forming the opinion, and any exhibits or summaries to be used by the expert in explaining the opinions. The mandatory disclosure requirements under Rule 26(a)(2) should be made in good faith. This is not a time to try to hoodwink your opponent with partial or misleading disclosures of expert testimony. Failure to fully comply may result in the exclusion of part or all of the expert's testimony. The expert's opinion should be complete and thorough. Attorneys are required to supplement any changes or additions to the expert's report in a timely manner in accordance with Rule 26(e)(1).

E. Settlement

All judges handle settlement conferences for each other. Most settlement conferences are done by magistrate judges. The parties sometimes request an Article III Judge or even a specific judge. Judge Echols encourages settlement conferences and inquires about settlement possibilities often. The parties are required to at least talk about settlement, and are encouraged to talk about it early. Since approximately 95% of the cases settle before trial, attorneys should talk about settlement at the first time possible and continue to consider settlement options during discovery.

Judge Echols is the chair of the Alternate Dispute Resolution (ADR) Committee in this district. On February 12, 1998, new Local Rules 21 through 27 were adopted to implement the Court's Alternative Dispute Resolution Plan. This district is fortunate to have a number of experienced and effective attorneys who have qualified as "neutrals" to assist the Court and the parties in the settlement of cases before the Court. The ADR Coordinator in the Clerk's office maintains a list of these neutrals. Judge Echols

encourages the attorneys to take advantage of the experience and expertise of these neutrals in reaching an acceptable out-of-court settlement of their case.

F. Pretrial Briefs

Pretrial briefs were discussed earlier in the section on pretrial matters. In Judge Echols' opinion, the most effective pretrial briefs are those which are reasonably brief, to the point, and deal with the pivotal issues to be decided.

G. Injunctions

Injunctions are filed in the Clerk's Office and scheduled through the courtroom deputy. Judge Echols wants to know what efforts have been made to contact the other side if they are not at the hearing.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Suppression hearings are scheduled when necessary.

B. Motions

Judge Echols does not require a response to every motion filed in a criminal case. Failure to respond shall indicate that there is no opposition to the motion.

V. Trial Procedure

A. Scheduling

Pursuant to Local Rule 11, cases are usually scheduled for trial after some discovery and it appears that settlement is unlikely.

B. Out-of-Town Parties, Witnesses, or Attorneys

Judge Echols tries to accommodate out-of-town parties, witnesses, and attorneys as long as it does not unduly interfere with the Court's calendar and the efficient administration of justice.

C. Motions in Limine

Motions in limine are invited and are called for at the pretrial conference. He wants the attorneys to think about evidentiary disputes early so they can be decided in advance, if possible, without an interruption in the orderly presentation of proof at trial. Judge Echols will rule early on the motion if he can do so because it is important for the lawyers to know of these problems in advance if possible.

D. Voir Dire

Judge Echols' method of jury selection in a civil case is to seat all the jurors on the panel at once. The judge asks the initial questions to the entire panel and then allows follow-up questions by the attorneys. The judge will discuss with the attorneys ahead of time the amount of time they have in which to ask follow-up questions. Both sides are given an equal amount of time, usually about fifteen to twenty minutes. He doesn't tell the attorneys what to ask, but he will interrupt if the questions are not appropriate. The attorneys can ask probing questions or wasteful questions during their designated time. After the initial and follow-up questions, the attorneys are called to the bench to inquire if there are any challenges for cause. Challenges for cause are ruled upon at that time. Afterwards, a target number for the jury is established depending on the length of the trial. The longer the trial, the more extras; usually two. The target number determines how many jurors to eliminate. Three peremptory challenges are normally allowed, but Judge Echols grants more if the lawyers agree (most do). These strikes are mandatory. The plaintiff first exercises his/her mandatory strikes from the jury list and then passes the form to the defendant to exercise his/her mandatory strikes. The plaintiff and defendant see each other's strikes, so there are no double strikes.

In a criminal case, twelve jurors are seated and then replacements are called and questioned as individual jurors are challenged. Since the government and defense attorneys do not see each other's strikes, you can have double strikes in a criminal case.

E. Note-Taking by Jurors

Note-taking by jurors is allowed, but the customary admonitions are given.

F. Opening Statements

1. Length

Judge Echols gets an estimate from the attorneys as to how long their opening statements will last. He generally suggests no more than fifteen minutes, but makes a determination based on the estimates given by the attorneys.

2. Use of Exhibits

The use of exhibits is allowed in opening statements, so long as there are no apparent evidentiary problems. Often times, the exhibits are helpful to overview the anticipated evidence and to emphasize the key issues to be decided from the evidence to be presented.

G. Side Bar Conferences

Side bar conferences are generally allowed, unless the requests are repetitive and the parties are being overly contentious.

H. Videotaped Testimony

Videotaped testimony is allowed.

I. Deposition Reading

Judge Echols usually lets the lawyers determine how depositions will be read at trial.

J. Exhibits

There should be four copies of every exhibit: one original for the witness, one copy for the Court, one copy for opposing counsel, and one copy for the examining attorney. All exhibits must be tagged with adhesive-backed exhibit labels provided by the Clerk's Office. Premarking is required if there are numerous exhibits. Judge Echols encourages the use of the courtroom evidence presenter with camera and screen to present documents and exhibits. Judge Echols has sometimes requested that exhibit books be furnished if exhibits are voluminous. Exhibit books or binders also are helpful and save time when exhibits are to be shown to the jury during the examination of witnesses. Passing single copies of documents or photographs to jurors is time consuming and disrupts the orderly presentation of the proof.

K. Motions for Judgment as a Matter of Law

Motions for judgment as a matter of law are made and granted in accordance with Fed. R. Civ. P. 50. This is a high standard--all inferences are given to the non-moving party--but this motion should not be overlooked to narrow the issues to be decided.

L. Proposed Jury Instructions and Verdict Forms

Judge Echols prepares the standard jury instructions. Special jury instructions and proposed verdict forms are welcome, but should be submitted in accordance with the pretrial order, and no later than the beginning of trial.

M. Proposed Findings of Fact and Conclusions of Law

In a non-jury case, the general policy is to submit proposed findings of fact and conclusions of law after the trial and not file pretrial briefs, except perhaps on a particular issue which may be pivotal in the consideration of the evidence. Findings of fact and conclusions of law are submitted after the transcript is filed (if a transcript is ordered). Judge Echols has no policy to cite to the record if no transcript is filed; however, references to the record are helpful to the Court and are more persuasive.

N. Offers of Proof

Judge Echols allows offers of proof.

O. Jury Deliberation

1. Copy of Instructions

Jurors get copies of jury instructions. Four copies are generally sent back to a deliberating jury.

2. Access to Exhibits

As a general rule, all exhibits admitted into evidence are sent to the jury, but there are exceptions. For example, a deliberating jury is not normally allowed to operate an audio or videotape machine to listen to or view evidence, although upon request they may be brought back into the courtroom to listen or view under the supervision of the Court.

3. Access to Transcript of Testimony or Videotaped Testimony

If there is a transcript of the videotape and it is admitted into evidence, it may be sent back to the deliberating jury.

4. Availability of Counsel

Judge Echols allows lawyers to return to their offices during jury deliberation, but they must provide telephone numbers and be available upon call in ten to fifteen minutes.

5. Taking the Verdict and Special Interrogatories

The lawyers are present when the verdict is received and read. Special interrogatories must be submitted in advance and agreed upon in the jury charge conference.

6. Polling the Jury

Judge Echols polls the jury in every case.

7. Interviewing the Jury

The interviewing of jurors is not allowed without permission of the Court. The parties may file a motion for permission to interview the jurors, but Judge Echols usually does not allow interviewing of jurors immediately after the trial unless he is notified in advance and the jurors have agreed to be interviewed. Many jurors don't want to answer questions about their vote, the jury's verdict, the position of fellow jurors, or justification of their decision. Jurors take their jobs seriously and most are mentally drained after the verdict is rendered. Judge Echols has allowed attorneys to submit proposed written jury questions to him with copies to the other side, and he has forwarded the approved questions to the jurors. Answers received are furnished to both sides.

VI. Sentencing in Criminal Cases

A sentencing before Judge Echols lasts approximately one hour. Position papers must be submitted in advance. The presentence report is reviewed. Live testimony is permitted.

VII. Other Comments

-- Attorneys are not permitted to walk around freely in the courtroom. Attorneys are requested to stay close to the lectern and should ask permission to approach a witness in the witness box.

-- Attorneys should stand when speaking in court.

-- Attorneys should be prepared to introduce their witnesses with whatever background information is desired in accordance with Local Rule 12(c)(2), so as to avoid laborious and time-consuming questions on the subject.

-- Attorneys should not repeat or attempt to characterize the witnesses' answers during an examination.

-- Attorneys should not make a speech or attempt to coach the witness when making an objection.

-- Attorneys in Nashville show respect for the Court. Sometimes, however, they don't show respect for each other. They should always try to act professionally as officers of the Court, without compromising zealous advocacy or revealing a personal dislike for the opponent.

(REVISED 2/99)

PRACTICE AND PROCEDURE MANUAL

U. S. DISTRICT JUDGE TODD J. CAMPBELL

I. Brief Biography

Judge Todd J. Campbell was appointed by President Clinton on December 27, 1995. He graduated from the University of Tennessee Law School in 1982 and Vanderbilt University in 1978. Prior to his investiture, Judge Campbell served as counsel to the Vice President of the United States and engaged in the private practice of law in Nashville, Tennessee.

II. Preliminary General Matters

A. Scheduling

Doris Bush is Judge Campbell's Courtroom Deputy, (615) 736-5549. All scheduling requests should be made by written motion.

B. Correspondence with Court

All written communication with the Court should be in a manner expressly authorized by the Federal Rules of Civil Procedure. Letters to the Court are not so authorized and any letters submitted will be filed with the Clerk of Court as part of the record.

C. Telephone Conference with the Court

Telephone conferences will be considered upon request of a party to accommodate unique circumstances in a case.

D. Telephone Conference with Law Clerks

All scheduling requests should be made by written motion. Telephone conferences, when necessary, are permitted with Judge Campbell's staff attorneys concerning administration, but not the merits, of a case.

E. Pro Hac Vice Admission

Local Rule 1 applies to admission pro hac vice.

F. Motion to Ascertain Status

Local Rule 8(b)(8) applies to motions to ascertain status.

III. Pretrial Matters -- Civil Cases

A. Scheduling Orders

Under Local Rule 11, customized case management, scheduling orders are typically entered by the Magistrate Judge assigned to the case. Changes to a scheduling order, therefore, typically should be directed to the Magistrate Judge who entered the order.

B. Continuances and Extensions

1. General Policy

Continuances will be considered upon agreement of the parties or for good cause shown.

2. Requests

All requests to the Court shall be made by written motion. No continuances or extensions are granted orally.

C. Pretrial Motions

1. Referral to Magistrate Judge

Under Local Rule 11, customized case management, most pretrial, non-dispositive motions are referred to the Magistrate Judge assigned to the case.

2. Oral Argument

Motions for oral argument are granted when appropriate.

3. Briefs

Briefs should be direct and to the point. Parties should pay particular attention to Local Rule 8(b)(7) regarding the statement of material facts not in dispute for purposes of summary judgment motions. Failure to respond to the statement shall mean the facts therein are not disputed.

4. Chamber Copies of Filings

Copies of documents filed with the Clerk of Court should not be submitted to Chambers.

5. Proposed Orders

Proposed orders are unnecessary.

D. Discovery

1. Discovery Period and Extensions

Under Local Rule 11, customized case management, most discovery matters are referred to the Magistrate Judge assigned to the case. Discovery disputes, therefore, are typically heard by the Magistrate Judge. Administrative Order 132-6 provides that the Court has opted out of Rule 26 (a)(1) of the Federal Rules of Civil Procedure regarding mandatory initial disclosure.

2. Interrogatory Responses

Local Rule 9 applies to interrogatory responses.

3. Resolution of Discovery Disputes

Under Local Rule 11, customized case management, most discovery matters are referred to the Magistrate Judge assigned to the case. Discovery disputes, therefore, are typically heard by the Magistrate Judge.

4. Confidentiality Agreements

Confidentiality agreements are considered based on a balance between the public's right to have access to public court records and the need for confidentiality in a particular case.

5. Expert Witnesses

Local Rule 12(c)(6) applies to expert witnesses. Judge Campbell generally has no objection to live testimony of expert witnesses on direct examination. Failure to comply with, or exceeding the scope of, the disclosures required by Rule 26(a)(2) of the Federal Rules of Civil Procedure shall be grounds for exclusion of an expert. Motions in limine should be filed if an expert's qualifications are challenged.

E. Settlement

1. Settlement Conferences in Jury Cases

Local Rules 20 to 27 apply to ADR.

2. Settlement Conferences in Non-Jury Cases

Local Rules 20 to 27 apply to ADR.

F. Pretrial Briefs

1. Form

The content and deadline for pretrial briefs are discussed at a pretrial conference.

2. Scope in Non-Jury Case

The content and deadline for pretrial briefs are discussed at a pretrial conference.

3. Scope in Jury Case

The content and deadline for pretrial briefs are discussed at a pretrial conference.

G. Injunctions

1. Scheduling

Local Rule 8(d) applies to applications for temporary restraining orders. scheduling requests for cases assigned to Judge Campbell should be made to the Courtroom Deputy.

2. Expedited Discovery

The Court will consider written motions for expedited discovery for good cause shown.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Motions to suppress evidence shall be filed by the motion deadline and heard in advance of trial.

B. Motions

Motions shall be made in writing and shall be supported by briefs. Parties shall comply with the Standing Discovery Order and Plan for Prompt Disposition of Criminal Cases.

C. Pretrial Conferences

Pretrial conferences are typically not held in criminal cases, but are held in complex cases or upon request of a party.

V. Trial Procedure

A. Scheduling

Jury trials generally commence on Tuesday and continue until concluded. Trials generally run from 9:00 a.m. to 5:00 p.m. with a lunch break from 12:00 Noon to 1:00 p.m. Counsel are typically asked to arrive early or stay late to discuss matters outside the presence of the jury.

B. Out-of-Town Parties, Witnesses, or Attorneys

Special requests to accommodate out-of-town individuals shall be made by written motion at the earliest available opportunity.

C. Motions in Limine

Motions in limine shall be filed prior to the pretrial conference and shall be argued at the pretrial conference. An order setting the pretrial conference will provide the deadline for the filing of motions in limine.

D. Courtroom Decorum

Local Rule 12 applies to courtroom decorum.

E. Voir Dire

In civil cases, typically, seven jurors are seated. There are no alternates in federal civil trials. Each side (not each party) has three peremptory challenges.

Jury selection begins by the Court placing fourteen (14) panel members in the jury box. The Court then does the initial voir dire followed by counsel for Plaintiff and counsel for Defendant. In pro se cases, the Court conducts all the voir dire.

If seven or more panel members remain after the juror challenges are completed, the seven members with the lowest seat numbers are sworn as jurors. If less than seven panel members remain, additional panel members are placed in the jury box for voir dire. Once a side passes a juror without challenge, they may not challenge that juror later.

The process, if necessary, continues as described until the jury is fully selected.

Jury selection in criminal cases follows the same pattern as in civil cases except twelve (12) jurors and two (2) alternates are typically selected.

F. Note Taking by Jurors

Jurors are permitted to take notes, subject to instructions by the Court.

G. Opening Statements

1. Length

Judge Campbell typically does not place a limit on the length of an opening statement. However, opening statements may be limited on a case-by-case basis.

2. Use of Exhibits

Exhibits for which there is no dispute as to admissibility or authenticity may be used in opening statements. Contested exhibits shall not be used. Evidence that is the subject of a pending motion in limine shall not be discussed in an opening statement.

H. Side Bar Conferences

Side bar conferences should be requested when necessary, but such requests should not be routine.

I. Videotaped Testimony

The parties shall notify the Court at the pretrial conference that videotape or audiotape evidence will be used so that appropriate equipment will be available. The parties shall be prepared to edit or selectively play such evidence to comply with evidentiary rulings.

J. Deposition Reading

The Court will permit two lawyers to play the roles of counsel and witness in reading depositions.

K. Exhibits

The parties should stipulate as to the admissibility and authenticity of as many exhibits as possible. If an exhibit will be passed to the jury, the parties shall bring enough copies for each juror as well as the Court. Counsel shall familiarize themselves with how to use the evidence presenter.

L. Motions for Judgment as a Matter of Law

Rule 50 of the Federal Rules of Civil Procedure applies to motions for judgment as a matter of law.

M. Proposed Jury Instructions and Verdict Forms

Judge Campbell requires all proposed jury instructions and verdict forms to be filed prior to the pretrial conference. The order setting the pretrial conference will set the filing deadline. Proposed jury instructions shall cite to the authority that is the basis for the instruction.

N. Proposed Findings of Fact and Conclusions of Law

Local Rule 12(i) applies to proposed findings of fact and conclusions of law. Judge Campbell typically does not require that proposed findings of fact and conclusions of law be submitted prior to trial.

O. Offers of Proof

Counsel shall request offers of proof when appropriate and such proof typically will be taken during a break in the trial.

P. Jury Deliberation

1. Copy of Instructions

Each juror will receive a copy of the jury charge and verdict form for use in their deliberations.

2. Access to Exhibits

Exhibits admitted into evidence, absent an objection, go with the jury to the jury room for their deliberations.

3. Access to Transcript of Testimony or Videotaped Testimony

The Court considers requests by juries for review of trial testimony on a case-by-case basis. Daily transcripts are not available to the Court absent special arrangement by the parties.

4. Availability of Counsel

Counsel must advise the Courtroom Deputy of where they may be reached on short notice upon the jury reaching its verdict.

5. Taking the Verdict and Special Interrogatories

Judge Campbell reads the verdict form and polls the jury.

6. Polling the Jury

Judge Campbell polls each individual juror.

7. Interviewing the Jury

Local Rule 12(h) applies to post-verdict interrogation of jurors. Jurors shall be interviewed only in exceptional circumstances.

VI. Sentencing in Criminal Cases

A. On Guilty Pleas

Administrative Order 117-3 of the Court generally provides that sentencing shall occur more than 80 days after a plea of guilty to allow for the preparation of a presentence report.

B. After Verdict

Administrative Order 117-3 of the Court generally provides that sentencing shall occur more than 80 days after a verdict of guilty to allow for the preparation of a presentence report.

VII. Other Comments

A. Pretrial Conference

The parties will receive a pretrial order regarding the following matters for consideration at the pretrial conference:

Counsel are required to submit a joint proposed pretrial order prior to the pretrial conference. The pretrial order must contain: (1) a recitation that the pleadings are amended to conform to the pretrial order and that the pretrial order supplants the pleadings; (2) a statement of the basis for jurisdiction of the Court; (3) a short summary of the plaintiff's theory (no more than one page); (4) a short summary of the defendant's theory (no more than one page); (5) a statement of the issues; (6) a succinct statement of

the relief sought; (7) a summary of any anticipated evidentiary disputes; and (8) an estimate of the anticipated length of trial.

Counsel must also submit to the Court prior to the pretrial conference, the following: (1) proposed jury instructions, with citations to supporting authorities; (2) proposed jury verdict forms; (3) stipulations; (4) motions in limine; (5) witness list; and (6) exhibit list.

Counsel shall also be prepared at the pretrial conference to: (1) identify and discuss undisputed facts and issues; (2) discuss the status of discovery; (3) preview proposed testimony; (4) discuss expert testimony; (5) preview proposed exhibits; (6) discuss motions in limine; (7) discuss settlement; and (8) discuss what shall be in the pretrial briefs and when the briefs shall be filed.

The parties may be required to file additional materials as necessary.

B. Summary Judgment

Lawyers should carefully follow Local Rule 8(b)(7) regarding the statement of material facts not in dispute for purposes of summary judgment motions. Failure to respond to the statement shall mean the facts therein are not disputed.

C. Expert Witnesses

An expert witness is subject to exclusion if the disclosure required by Rule 26(a)(2) of the Federal Rules of Civil Procedure is not made timely or if the testimony offered exceeds the scope of the disclosure.

PRACTICE AND PROCEDURE MANUAL

JUDGE ALETA A. TRAUGER

I. Brief Biography

Judge Aleta A. Trauger was appointed by President Clinton on October 26, 1998. She received her B.A. degree from Cornell College in Iowa in 1968, her Master of Arts in Teaching degree from Vanderbilt University in 1972 and her J.D. degree from Vanderbilt University School of Law in 1976. She was an Assistant United States Attorney from 1977–1982, serving for four years in Nashville and one year in Chicago, Illinois. She was in-house counsel for the College of Charleston in 1984–85, served as Mayor Bredesen's first Chief of Staff from 1991–92 and spent the rest of the years prior to 1991 in private practice in Nashville. For five years prior to her appointment to the United States District Court, Judge Trauger was a United States Bankruptcy Judge in Nashville.

II. Preliminary General Matters

A. Scheduling

Monte Klassen is Judge Trauger's courtroom deputy; she can be reached at (615) 736-7157. Judge Trauger sets her own calendar, and there are no standard days or times for any particular matters, except for jury trials in Nashville which begin on Tuesdays at 9:00 a.m.

B. Correspondence with Court

All written communication with the court should be in a manner expressly authorized by the Federal Rules of Civil Procedure. Letters to the court are not so authorized and any letters submitted will be filed with the Clerk of Court as part of the record.

C. Telephone Conferences with Court

Telephone conferences with Judge Trauger are required prior to the filing of motions to compel or other discovery motions. Requests for participation in case management or other conferences by telephone must be made in advance by written motion.

D. Telephone Conferences with Law Clerks

Counsel are not to initiate telephone conversations with Judge Trauger's law clerks. On rare occasions, a law clerk may be asked to contact counsel about an administrative matter.

E. Pro Hac Vice Admission

Counsel may be admitted *pro hac vice* pursuant to Local Rule 1(d). Association of local counsel may be required. [See Local Rule 1(h)]

F. Motion to Ascertain Status

Local Rule 8(b)(8) applies to motions to ascertain status.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

Judge Trauger conducts her own initial case management conferences. Counsel are required to file **three business days** prior to the initial case management conference a proposed initial case management order covering the subjects delineated in Local Rule 11(d)(2) and including additional standard provisions set out in the attachment to the Order setting the initial case management conference. Lead counsel for all parties are required to attend the initial case management conference, and Judge Trauger considers this an extremely important phase of every lawsuit. With rare exceptions, a firm trial date is set during the initial case management conference.

Cases reassigned to Judge Trauger from other judges who have delegated case management to the Magistrate Judge shall remain with the Magistrate Judge for case management and decision on non dispositive, pretrial motions. Judge Trauger infrequently will refer new cases to the Magistrate Judge for case management.

B. Continuances and Extensions

1. General Policy

Continuances will be considered upon agreement of the parties or for good cause shown.

2. Requests

When counsel becomes aware of the need for a continuance, he or she should immediately alert Judge Trauger's courtroom deputy by telephone that a continuance request is going to be made. Prior to submitting a written motion, counsel should consult with all opposing counsel and reflect the positions of opposing counsel and a suggested time frame for rescheduling within the motion. A proposed order granting the continuance with space for insertion of the new setting should be submitted.

C. Pretrial Motions

1. Referral to Magistrate Judge

For cases referred to the Magistrate Judge for case management, the Magistrate Judge will decide most pretrial, non dispositive motions; for other cases, Judge Trauger will decide those motions. Most dispositive motions are not referred to the Magistrate Judge for report and recommendation.

2. Oral Argument

Pursuant to Local Rule 8(b)(1), requests for oral argument must be made in writing. Judge Trauger prefers a separate motion requesting oral argument. Such motions are granted when appropriate.

3. Briefs

Briefs are not to exceed 20 pages

4. Chamber Copies of Filings

When filings relate to an upcoming hearing or conference and, therefore, are time-sensitive, a copy of the filing may be hand-delivered to chambers at the time the document is filed with the clerk's office.

5. Proposed Orders

Proposed orders should accompany routine motions requesting extensions of time, continuances, admission *pro hac vice*, etc.

D. Discovery

1. Discovery Period and Extensions

Pursuant to Local Rule 11(e)(1)(a), unless otherwise ordered, discovery is stayed prior to the initial case management conference. Discovery deadlines are set during Judge Trauger's initial case management conferences; extension of those deadlines will be granted only upon written motion and for good cause shown. For reassigned cases and others where the Magistrate Judge is conducting case management, discovery deadlines will be set and extended by the Magistrate Judge.

2. Interrogatory Responses

Local Rule 9(a)(2) is expanded in Judge Trauger's cases to allow 60 interrogatories, including sub-parts.

3. Resolution of Discovery Disputes

In cases for which Judge Trauger has conducted the initial case management conference, no motions concerning discovery are to be filed until after the parties have conferred in good faith and, unable to resolve their differences, have scheduled and participated in a conference telephone call with Judge Trauger. For reassigned cases and others in which the Magistrate Judge is conducting case management, discovery disputes will be resolved by the Magistrate Judge.

4. Confidentiality Agreements

Court approval of confidentiality agreements is considered on a case-by-case basis.

5. Expert Witnesses

Judge Trauger adheres to the procedure set out in Local Rule 12(c)(6) for the presentation of expert witnesses. Requests for departure from this procedure are considered on a case-by-case basis. Absent meritorious objection by opposing counsel, medical testimony may be presented at trial by deposition. Motions in limine should be filed if an expert's qualification are to be challenged.

E. Settlement

The advisability and timing of judicial settlement conferences/mediation are discussed at the initial case management conference. Judicial settlement conferences are conducted by a Magistrate Judge. In most instances, mediation and other means of alternative dispute resolution are only ordered upon consent of all parties. Requests for settlement conferences or other means of alternative dispute resolution may be made at any time by written motion.

If a jury case settles closer to trial than two business days, the cost of summoning the jury may be assessed against the parties.

F. Pretrial Briefs

Pretrial briefs are not routinely required in jury cases. In some instances, Judge Trauger will request briefs on particular issues.

Proposed findings of fact and conclusions of law must be filed five days in advance of bench trials.

G. Injunctions

1. Scheduling

Local Rule 8(d) applies to applications for temporary restraining orders. Scheduling requests for cases assigned to Judge Trauger should be made to the courtroom deputy.

2. Expedited Discovery

The court will consider written motions for expedited discovery for good cause shown.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Motions to suppress evidence should be filed by the motion deadline. In most instances, these motions will be heard in advance of the trial date.

B. Motions

Motions should be made in writing and supported by a memorandum of law. Parties should comply with the Standing Discovery Order and Plan for Prompt Disposition of Criminal Cases.

C. Pretrial Conferences

Pretrial conferences are typically not held in criminal cases, unless the case is complex or a party requests a pretrial conference.

V. Trial Procedure

A. Scheduling

Jury trials in Nashville begin on Tuesdays at 9:00 a.m. and continue until concluded. The court day generally runs from 9:00 a.m. to 5:00–5:30 p.m., but counsel should be prepared to arrive early or stay late in order to discuss matters outside the presence of the jury or when the jury wishes to deliberate past normal working hours. Generally the court takes one morning break and one afternoon break and allows one hour for lunch.

Judge Trauger does not set trailer dockets for civil trials in Nashville and makes every attempt not to have civil trials be interrupted by other court proceedings.

B. Out of Town Parties, Witnesses or Attorneys

Special requests to accommodate out of town individuals should be made by written motion at the earliest available opportunity or discussed at the pretrial conference.

C. Motions in Limine

Deadlines for the filing of motions in limine and responses thereto are set in the Order Setting Case for Trial. Judge Trauger makes every effort to decide motions in limine far enough in advance of trial so that parties may appropriately plan the presentation of their cases.

D. Courtroom Decorum

Local Rule 12 sets out Judge Trauger's general expectations.

E. Voir Dire

After general *voir dire* by the court, counsel for each party is given an opportunity to *voir dire* the prospective jurors.

Names are randomly drawn, and an appropriate number of jurors are seated in the jury box and in chairs in front of the jury box so that all may be questioned at the same time. Each party exercises its peremptory challenges at the same time on written forms; therefore, duplicate strikes are a possibility. Challenges for cause are made at the bench during or at the end of *voir dire*. After the exercise of all challenges, the remaining perspective jurors move "up" to fill the empty chairs in numerical order.

In a civil trial, the first 7–10 jurors (depending on the anticipated length of trial) will constitute the jury. Alternate jurors have been abolished in federal civil trials. Therefore, all jurors remaining when deliberation begins will retire to the jury room. The jury must be comprised of at least 6 members.

In a criminal trial, the first 12 jurors constitute the jury, with an appropriate number of alternates (usually 2) following in numerical order.

F. Note Taking by Jurors

Jurors are permitted to take notes during the trial and take their notes into deliberation. The notes remain on their chairs in the courtroom at all other times. Judge Trauger gives strict instructions as to the use of the notes.

G. Opening Statements

1. Length

Absent good cause, Judge Trauger does not limit the length of opening statements.

2. Use of Exhibits

Counsel who wish to use exhibits or demonstrative evidence in opening statement should consult with opposing counsel in advance and attempt to work out any objections. Prior to opening statement, counsel should advise the court whether any demonstrative or other evidence proposed to be used remains objected to. Evidence that is the subject of a pending motion in limine should not be used in opening statement.

H. Side Bar Conferences

Side bar conferences should be requested when necessary but kept to a minimum. Judge Trauger prefers that matters that need to be discussed out of the presence of the jury be raised during recesses.

I. Videotaped Testimony

The use of videotaped testimony should be discussed at the pretrial conference so that appropriate equipment can be made available at the trial and rulings on objections may be made sufficiently in advance to allow for editing.

J. Deposition Reading

Depositions read at trial should be carefully edited so that only testimony relating to the witness's background, the issues in the case and credibility is read. Judge Trauger allows a lawyer or paralegal to read the answers of the witness from the witness box when a deposition is to be read at trial.

K. Exhibits

The parties should stipulate to the admissibility and authenticity of as many exhibits as possible. Plaintiff's exhibits are to be **premarked** with numbers, defendant's with letters. When introducing an exhibit, counsel should always show it to opposing counsel first and have an extra copy available for the court. If an evidence presenter is available and counsel intends to use it, counsel should become skilled in using the machine prior to the start of the trial. Judge Trauger permits counsel to pass individual copies of exhibits to jurors.

L. Motions for Judgment as a Matter of Law

Motions for judgment as a matter of law are governed by Rule 50 of the Federal Rules of Civil Procedure.

M. Proposed Jury Instructions and Verdict Forms

Counsel are to confer in good faith and agree on as many jury instructions as possible prior to the pretrial conference. Three business days before the pretrial conference, counsel are to file an agreed set of jury instructions, in hard copy and on disc, one instruction per page, with heading at the top. By the same deadline, each counsel should file additional instructions about which there is not agreement with citations to authority, in hard copy and on disc. The standard introductory and concluding instructions given by the court in every trial do not need to be submitted by counsel.

Counsel should likewise confer in good faith and attempt to agree in advance of the pretrial conference on a verdict form. Three business days in advance of the pretrial conference, an agreed verdict form (or alternatives if there is no agreement) should likewise be submitted in hard copy and on disc.

N. Proposed Findings of Fact and Conclusions of Law

Proposed findings of fact and conclusions of law are to be submitted five days in advance of bench trials.

O. Offers of Proof

Judge Trauger allows counsel to make offers of proof when requested and appropriate out of the presence of the jury.

P. Jury Deliberation

1. Copy of Instructions

A copy of the jury instructions is sent to the jury room with the jurors when they retire to consider their verdict.

2. Access to Exhibits

All exhibits submitted into evidence will be sent back to the jury room for use during deliberations. Counsel will be given an opportunity to assure that the appropriate exhibits are sent back by jointly conferring with the courtroom deputy.

3. Access to Transcript of Testimony or Videotaped Testimony

Requests by the jury to review testimony are considered by Judge Trauger on a case-by-case basis.

4. Availability of Counsel

Counsel must advise the courtroom deputy of where they may be reached on short notice at all times during jury deliberations.

5. Taking the Verdict and Special Interrogatories

Judge Trauger reads the verdict form when the jury returns with the verdict.

6. Polling the Jury

Judge Trauger polls each individual juror without request of counsel.

7. Interviewing the Jury

Local Rule 12(h) applies to post-verdict interrogation of jurors. Permission to interview jurors will only be granted in exceptional circumstances.

VI. Sentencing in Criminal Cases

Any party who anticipates producing testimony at a sentencing hearing should give notice of that fact as early as reasonably possible to the courtroom deputy and opposing counsel and provide an estimate of the time necessary for the presentation of the testimony.

VII. Other Comments

A. Pretrial Filings

Immediately upon the setting of the trial date (usually at the initial case management conference), Judge Trauger issues an order that sets out the nature and timing of pretrial filings, such as motions in limine, stipulations, exhibit lists, pretrial order, etc.

B. Summary Judgment

Counsel should carefully follow Local Rule 8(b)(7) regarding the statement of material facts not in dispute for purposes of summary judgment motions. Failure to respond to the statement shall mean the facts therein are not disputed.

PRACTICE AND PROCEDURE MANUAL

JUDGE WILLIAM J. HAYNES, JR.

I. Name and Brief Biography

Judge William J. Haynes, Jr. was appointed to the position of United States District Judge for the Middle District of Tennessee by President Clinton on November 15, 1999. He graduated from the College of St. Thomas in St. Paul, Minnesota with a Bachelor of Arts degree in Political Science and History in 1970, and from Vanderbilt University Law School in 1973.

Before his appointment to the federal bench, Judge Haynes worked for the Office of the Attorney General and Reporter for the State of Tennessee. In 1978, Judge Haynes served the office as deputy attorney general for the Antitrust and Consumer Protection Division. Later, Judge Haynes became the special deputy attorney general for litigation. After a brief stint in private practice, he was appointed as a Magistrate Judge for the Middle District of Tennessee in December, 1984, where he served until his appointment to the United States District Court.

Judge Haynes is married to Carol Donaldson Haynes and has three children. Judge Haynes is a lecturer in law at the Vanderbilt University Law School. He has been a member of the National Bar Association, the American Bar Association, the Nashville Bar Association, the Napier-Lobby Bar Association, Harry Phillips Inn of Court, the Tennessee Bar Association Commission on Women and Minorities in the Profession, and is a member of the Board of Directors of the American Judicature Society. Judge Haynes is also a Fellow of the American, Tennessee, and Nashville Bar Foundations.

II. Preliminary General Matters

A. Case Management and Scheduling

In accordance with the Court's case management plan, an initial case management conference is held and Judge Haynes uses that as an orientation to a bifurcated discovery plan.

Scheduling by Judge Haynes will focus on substantive issues, not just on the timing or progression of discovery. For example, discovery will be structured to address as quickly as possible a dispositive motion, particularly jurisdictional issues which would eliminate the need for other discovery. Judge Haynes will also inquire as to what discovery is necessary for the parties to evaluate the case promptly for settlement purposes. If appropriate, discovery is so limited and at the end of such discovery a status conference is set to determine if a settlement conference is appropriate. If settlement is likely, a settlement conference is set before another judge or upon agreement of the parties, before him. If settlement is not likely, discovery will be set to get the case ready for trial. In any event, it must be remembered that the approach will be one of customized case management so that what is related to the Court by lawyers about the case will greatly affect the provisions of any scheduling or case management order.

In complicated cases, Judge Haynes may require the disclosures that are reflected in an order that he entered in *Gibson Guitar Corp. v. Pattishall, McAuliffe, Nubury, Hilliard & Geraldson* (Docket 3: 91-0872) ["Pattishall Order"]. A copy of the Pattishall Order is included in *Appendix 3*.

Scheduling Order - Discovery Deadlines. Judge Haynes looks for the parties to use their best efforts to comply with such deadlines, since they framed the order to begin with. He recognizes, however, that invariably something unexpected will happen, and he is not bothered by a mutual agreement to extend a discovery deadline as long as it does not bump the pretrial conference or trial date. Upon submission of an agreed order, he will routinely sign it.

If the case is under the new case management plan, before signing any orders granting continuances or additional time for discovery in cases where the "age" of the case is approaching one year, Judge Haynes will require a satisfactory explanation at justifying the request for additional time. If the case precedes the case management plan, particular scrutiny is given to cases approaching three years since filing.

B. Correspondence with Court

All correspondence should be directed to the Court. Further, correspondence should not address substantive matters. Any communication with the Court addressing a substantive matter should be by motion or memorandum. It is certainly permissible for scheduling issues to be addressed in correspondence.

C. Telephone Conference with Court

Judge Haynes favors telephone conferences to resolve discovery disputes which arise during depositions, except for disputes concerning privilege issues or complicated issues.

These are acceptable to him when out-of-town lawyers are involved, unless there are a number of complicated issues to be resolved that might need District Court review, and then he will require an in-court hearing so that a court reporter can be present.

D. Telephone Conference with Law Clerks

Scheduling matters should be handled by the courtroom deputies, not by the law clerks. Thus, telephone conferences with law clerks are rare.

E. Pro Hac Vice Admission

This matter is usually reserved for the District Judges but he will handle such requests to accommodate a proceeding before him.

F. Briefs

In briefs, it is helpful to have a good statement of the facts and/or allegations in the case. Exhibits should be differentiated by exhibit tabs or colored paper separating the individual exhibits. This makes it easier for Judge Haynes to cite exhibits in his report and recommendations.

Briefs that exceed 30 pages should include a table of contents to provide him a "road map" of the arguments. He prefers extensive briefing on esoteric areas such as RICO and ERISA.

Reply Briefs. His practice is to allow the party making a motion to file a response to his opponent's opposing brief. He does not favor further briefs after the reply. After the opposition to a motion has been filed, he traditionally waits 13 days for a reply from the movant.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

All scheduling orders will be governed by the new rules on case management.

B. Continuances and Extensions

Judge Haynes' primary pet peeve concerns eleventh hour requests to reschedule motion hearings or pretrial conferences. Such requests present problems of giving timely notice to the opposing side, canceling the court reporter and security personnel, and wasting preparation time by the Magistrate Judge. He has no problem with requests made three days prior to the scheduled time. Even if less than three days' notice is given, however, he will grant a postponement, if the other side agrees to the postponement.

C. Pretrial Motions

1. Form of Motions

Grounds for motions should be stated succinctly in the motion itself. For example, on a motion to dismiss, rather than merely stating that the motion should be granted because the complaint fails to state a claim, more specific reasons should be set forth.

2. Referral to Magistrate Judge

Because of the new rules on case management, dispositive motions are rarely referred to the magistrate judge. The exception to this is Judge Higgins who does continue to refer some dispositive motions.

3. Oral Argument

He never denies a request for argument. He does not set a hearing *sua sponte* unless he does not have a clear understanding of the issues. He has also invited counsel to a hearing to respond to specific questions from him after he has reached a preliminary ruling on the motion.

4. Chamber Copies of Filings

Chamber copies of filings should be used only if time is of the essence.

5. Proposed Orders

Judge Haynes does utilize proposed orders which are submitted by the parties, particularly if simple and straightforward.

6. Resolution of Motions Before Trial

His goal is to get a report and recommendation filed in time for the parties to serve objections before the pretrial conference. In cases where this deadline cannot be met, he calls the courtroom deputy and asks for the pretrial conference and trial dates to be moved. He has also seen the judges grant joint motions to continue a trial pending the receipt of a report and recommendation.

D. Discovery

1. General

His rulings on discovery disputes do not depend upon the attitudes of the referring judges, but instead reflect his own opinions. He believes the District Judges are uniform in allowing "liberal discovery," which is his own policy. Exceptional cases involve questions of privilege, and he decides them on a case-by-case basis.

2. Discovery Period and Extensions

Judge Haynes does work with the lawyers on determining the discovery period and extensions thereof, unless requests of the lawyers unduly delay the case.

Judge Haynes looks for the parties to use their best efforts to comply with such deadlines, since they framed the scheduling order. He recognizes, however, that invariably something unexpected will occur, and he is not bothered by a mutual agreement to extend a discovery deadline as long as it does not affect the pretrial conference or trial date. Upon submission of an agreed order, he will routinely sign it.

3. Interrogatory/Responses

(a) Number Limit

He is more likely to allow interrogatories in excess of the local rules limit in cases involving multiple parties, claims, cross-claims, etc. Even so, he prefers for the interrogatories to be limited to the identification of witnesses and statistical information; if more detail is sought, he may require the parties to pursue the information through depositions. Although he has not denied such a motion, he has only granted it in one case, and there he got the requesting parties to consolidate their individual requests.

(b) Instructions and Definitions

He is not bothered by the inclusion of instructions and definitions in interrogatories as long as they are not oppressive and are designed to make answering easier or to help explain the questions. He has seen

some that were so tedious as to amount to additional sets of interrogatories, and these he does not favor.

(c) Objections

When a party objects to discovery requests as over broad or unduly burdensome, he looks for specifics. When the objection is over breadth, a party should be prepared to describe the volume of material that would have to be reviewed in order to respond (e.g., eight file cabinets). A claim of burdensomeness should include an identification of how long it would take to find, select, assemble, etc., the materials necessary to respond. Generic statements will not suffice.

The preferred method for lodging objections on burdensome discovery is by filing a motion for protective order. See, *Tarlton v. Meharry Medical College*.

(d) In the case of multiple claims and parties, counsel should coordinate interrogatories, document requests, etc. in order to avoid duplication.

4. Resolution of Discovery Disputes

Judge Haynes believes the district judges are uniform in allowing wide-open liberal discovery. Exceptional cases involve questions of privilege, and he decides them on a case-by-case basis.

Judge Haynes encourages discovery conference that can be conducted by a telephone conference with the Court on any discovery disputes except on privilege issues or complicated matters.

5. Rule 37 Sanctions

His rulings on motions to compel not arising out of violations of Court orders will depend upon how close the question is. If the opposing party has taken an unreasonable position, he will likely grant sanctions. If the motion arises out of a violation of a pre-existing order, he will be inclined to award sanctions unless there is some valid reason not to. In determining the amount of attorneys' fees to award, he considers what he knows from other cases, the papers filed in the pending case, etc., to determine if the request is within the range of reason. If so, and there is no opposition, he probably will not cut the request much.

6. Motions to Compel Requests for Expedited Determination

Upon receiving such a request, he will call for a status conference to determine the necessity for an expedited ruling. If the problem can be solved by postponing the discovery deadline without interfering with pretrial conferences and trial date, he will use that approach. Otherwise, he will hold the hearing, and make the decision of that motion his top priority.

7. Telephone Depositions

He has no problem as long as the parties agree.

8. Instructing Witnesses Not to Answer

An instruction not to answer is permissible only on privileged matters. The proper course is for interrogating counsel to ask the specific questions on the issues sought to be discovered and thereafter to adjourn the deposition or to adjourn the deposition and seek a protective order or to request a telephone conference with the Magistrate Judge. A preferable practice may be for the party asserting privilege to file a motion for protective order because that party is in the best position to state why the matter at issue is privileged.

9. Confidentiality Agreements

Judge Haynes will enter protective orders on confidential matters, unless the public interest is involved. He finds that the use of protective orders expedites cases.

E. Settlement

1. Who Presides

He leaves this to the election of the parties, subject to anything to the contrary which is contained in the order of reference from the district judge. Settlement conferences will not be performed by the case manager or by the judge who assigned the case unless (1) there is a compelling reason to the contrary, (2) the parties consent, and (3) the district judge to whom the case is assigned agrees.

Either Judge Haynes or the other Magistrate Judge will conduct the conference. If Judge Haynes conducts it, and a party has a problem with his presiding further in the case because of something he has heard, he has no reservation about reassigning the case.

2. Procedure

Counsel submit letters under seal (that do not become part of the record) including a description of the case, the amount of the offer, the party's evaluation of the case, the cost of litigation, and representation that these matters have been discussed with the client.

He reviews these with each side separately, and if there is anything that a party does not want disclosed to the other side, he wants to be told. The client, or someone with settlement authority, must be present. He then conducts shuttle diplomacy, and gives each side his evaluation of the strengths and weaknesses of the case and a rationale for the settlement amount he recommends. He has conducted several successful settlement conferences.

F. Pretrial Briefs

1. Form

The statement of facts in the pretrial brief is very important.

2. Scope in Non-Jury Cases

In non-jury cases, trial briefs may be submitted before or after trial as the parties may elect.

3. Scope in Jury Cases

It is helpful to have a pretrial brief in jury cases, unless counsel has submitted proposed jury instructions.

G. Injunctions

1. Scheduling

2. Expedited Discovery

Expedited discovery is certainly appropriate in cases involving injunctions.

H. Other Preliminary Matters

He prefers to deal with as many other preliminary matters as possible at the pretrial conference.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

There will not often be suppression hearings before Judge Haynes in criminal cases.

B. Motions

There will not often be motions before Judge Haynes in criminal cases.

C. Pretrial Conferences

In some complex criminal cases, there will be pretrial conferences conducted before Judge Haynes.

V. Trial Procedure

A. Scheduling and Location

Scheduling of trials will be subject to the new rules on case management. Bench and jury trials are held in Judge Haynes' courtroom.

B. Out-of-Town Parties, Witnesses, or Attorneys

Judge Haynes will attempt to fashion orders on trial procedure to accommodate out-of-town parties, witness and attorneys.

C. Motions *In Limine*

Judge Haynes prefers the use of these motions rather than having to face an issue for the first time during trial.

D. Courtroom Decorum

Counsel should remain behind the podium, and ask permission to approach the witness. Since he does not always have a court officer present, either his law clerk or the lawyer will have to pass exhibits to witnesses.

E. *Voir Dire*

1. In criminal cases, Judge Hayes uses Judge Wiseman's method of jury selection.

In civil cases, if the parties agree, he uses Judge Nixon's method (alternative strikes); if there is no agreement, he uses Judge Wiseman's (all prospective jurors are "placed in the box" and examined for *voir dire* at the same time).

2. Counsel should be cautious not to use too much personal solicitation of the jury. He covers this at the pretrial conference. If during *voir dire* a lawyer goes too far, he will admonish counsel to recall the local rule, which is his hint that this rule is being violated.

3. In this district, magistrate judges are authorized to conduct *voir dire* in felony cases as long as there is no objection. This is consistent with a prior ruling of the United State Supreme Court that magistrate judges have authority to conduct *voir dire* in felony cases as long as there is no objection from the defendant. However, there is a case before the United States Supreme Court from another district contesting such authority.

4. Use of Exhibits in *Voir Dire*. Judge Haynes has not had to rule on whether exhibits may be used during *voir dire*. Judge Haynes does permit use of exhibits during *voir dire* if no valid objection is made to the exhibit.

F. Note Taking by Jurors

Taking of notes by jurors is permitted; however, jurors will receive the usual cautions and admonitions concerning the use of notes.

G. Opening Statements

1. Length

He has no time limit on opening statement.

2. Use of Exhibits

As long as permission has been obtained as a preliminary matter or at the pretrial conference, it is permissible to use exhibits in opening statements that are not subject to objection.

H. Side Bar Conferences

Side Bar Conferences are permitted and utilized where appropriate.

I. Videotaped Testimony

Judge Haynes has no problems or reservations regarding the use of videotaped testimony.

J. Deposition Reading

It is permissible to utilize the "two-person" method of reading depositions.

K. Exhibits

All exhibits should be "pre-marked."

L. Expert Witnesses

Judge Haynes prefers the procedure of introducing the direct testimony of expert witnesses in narrative form. This is the procedure which was required by the prior Local Rules and which will still be followed when the Court so directs.

M. Motions for Directed Verdict (Now Called "Motion for Judgment as a Matter of Law")

N. Proposed Jury Instructions and Verdict Forms

Judge Haynes does utilize verdict forms. A draft of proposed jury instructions should be submitted before the first day of trial. However, supplemental filings of proposed jury instructions will be permitted throughout the trial.

O. Proposed Findings of Fact and Conclusions of Law

The parties may submit proposed findings of fact and conclusions of law either before or after trial, as the lawyers prefer.

P. Offers of Proof

Lawyers are encouraged to utilize offers of proof, particularly in cases where injunctive relief is requested.

Q. Closing Argument

There is no time limit on closing argument. Pursuant to the local rules and the Code of Professional Responsibility, Judge Haynes does not allow counsel to express personal opinions in argument. Counsel may argue any inferences from the proof that are logical and supported by the evidence.

R. Jury Deliberation

1. Copy of Instructions

Jurors will be given copies of the jury instructions which are read to them.

2. Access to Exhibits

Jurors will have access to exhibits during their deliberations.

3. Access to Transcript of Testimony or Videotaped Testimony

Judge Haynes has reservations with regard to allowing jurors access to a transcript of testimony or videotaped testimony. This is because such access tends to give undue emphasis to testimony which is transcribed or videotaped.

4. Availability of Counsel

During jury deliberations, counsel need not remain in the Courtroom. However, they should be available on short notice and the Court should be kept advised as to where counsel can be contacted.

5. Taking the Verdict and Special Interrogatories

Special interrogatories are utilized when requested.

6. Polling the Jury

The jurors will be polled when requested by the lawyers.

7. Interviewing the Jury

Interviewing of jurors is permitted only with leave of Court. Whether leave of Court will be granted is determined on a case-by-case basis.

VI. Sentencing in Criminal Cases

Judge Haynes follows the sentencing guidelines.

VII. Other Comments

A. Responsibility of Local Counsel

1. Purpose

Local counsel is required to assure that outside counsel will know of local practice and procedure. The local rules impose greater obligations than this on local counsel, but he enforces that rule only after notice to local counsel at a conference. He noted that the Local Rules Revision Committee is particularly looking at this rule.

2. Limited Responsibility and Authority

He has no problem with local counsel being a "briefcase toter" as long as that has been disclosed to outside counsel.

3. Rule 11 Sanctions

There has been a case where sanctions have been imposed only on out-of-state counsel and not local counsel.

B. Rule 11 Sanctions

He has handled several of these. Technically, such motions are non-dispositive, but some are so critical to the outcome of the case (because of the nature or amount of the sanctions) that he prepares a report and recommendation rather than an order so that a party can obtain *de novo* review from the district judge rather than review based on the clearly erroneous standard.

C. Submissions Under Seal

Matters to be submitted under seal should be placed in an envelope with the case name and docket number on it. The envelope should be actually sealed. The matter should be accompanied by a motion to seal and the matter will remain sealed until he has ruled on the motion to seal.

D. Agreed Orders

He has no problem with these when they concern routine matters such as extending discovery or other rescheduling deadlines.

PRACTICE AND PROCEDURE MANUAL

SENIOR U. S. DISTRICT JUDGE THOMAS A. WISEMAN, JR.

I. Brief Biography

Judge Thomas A. Wiseman, Jr. was appointed by President Carter in 1978. He served as Chief Judge from 1984 through August 1991, and took senior status in November of 1995. He received his B.A. and J.D. degrees from Vanderbilt University in 1952 and 1954 respectively, and an L.L.M. from University of Virginia in 1990. He served in the Tennessee House of Representatives from 1965 through 1968 and was State Treasurer from 1971 through 1974.

II. Preliminary General Matters

A. Scheduling

Scheduling should be undertaken with Shari Tipton, Judge Wiseman's Courtroom Deputy, (615) 736-5081.

B. Correspondence with Court

Judge Wiseman prefers that all matters be communicated to the Court in pleadings, notices, memoranda, and briefs. If letters are absolutely necessary, the parties should be aware that they will be filed in the Clerk's Office.

C. Telephone Conference with Court

Telephone conferences may be arranged for pretrial matters not referred to the magistrate judge. He has no problem with these when out-of-town lawyers are involved. In fact, he has conducted a TRO hearing with one of the lawyers present only by telephone.

D. Telephone Conference with Law Clerks

Telephone conferences with Judge Wiseman's law clerks are allowed concerning the administration, but not the merits, of any case.

E. Motion to Ascertain Status

The proper procedure varies with the type of motion and its urgency. If it is an urgent matter, if there is a pending court date or if the motion involves a time period of importance, you may call the Court's secretary (Nancy Duckwiler, (615) 736-7013) or courtroom deputy or you may file a motion to ascertain status. Otherwise, no inquiry is welcomed until more than 90 days after the motion is ripe for consideration; i.e., more than 90 days has passed from the date after all briefing and argument is complete. After this 90 day period has expired, an inquiry or motion to consider status of case is appropriate.

III. Pretrial Matters - Civil Cases

Please note that Judge Wiseman refers all eligible cases to the U.S. Magistrate Judges for Customized Case Management pursuant to Rule 11 of the Local Rules of Court. However, the following information generally applies to all civil cases exempt from Customized Case Management or not in referral status to the Magistrate Judges.

A. Scheduling Orders

As long as both sides agree, most items in a scheduling order can be altered, with the exception of the trial date. As long as the parties are actually working on preparing the case, even the trial date can be moved by agreement of counsel with the concurrence of the Court. Any proposals to change the trial date must be checked with his courtroom deputy. He suggested that lawyers be considerate of the Court, and let the courtroom deputy know of any proposed changes as much in advance as possible.

B. Continuances and Extensions

1. General Policy

If lawyers are candid with each other and the Court, and if it does not appear that movant is merely trying to delay, continuances are generally granted.

2. Requests

All requests should be made in writing. A status conference or hearing on the motion should be requested, if desired by counsel.

C. Pretrial Motions

1. Referral to Magistrate Judge

He generally does not send discovery motions to a magistrate judge for resolution. Personally deciding these matters helps him know more about cases he is going to try. On another note, however, Judge Wiseman expressed disappointment that parties so seldom consent to a magistrate judge trial. He stated that we have bright magistrate judges, and parties can get a quicker and more certain trial date with less trial interruptions.

2. Oral Argument

When requested by the parties, Judge Wiseman will grant oral argument if he feels it would be beneficial. He will order it sua sponte if he feels some issue is not adequately addressed in the briefs. When a hearing is ordered, it is typically scheduled for the next available date by the courtroom deputy. If counsel have conflicts on the scheduled date, they should contact the courtroom deputy after receiving the order or case notice. All the courtroom deputies are conscious of the judges' desire to accommodate counsel on such matters.

3. Briefs

He dislikes wordiness and likes brevity. Briefs should get to the point as quickly as possible. He does not mind additional briefs after the parties' initial briefs have been filed as long as something new is raised.

4. Chamber Copies of Filings

Judge Wiseman does not want extra copies of filings; however, if a party is filing a last-minute pleading (the day before or the day of a hearing, for example), a "courtesy **copy**" of the filing should be delivered directly to chambers.

5. Proposed Orders

He does not have a problem with this, but generally prefers to write "granted" or "denied" at the end of the motion paper, which is just as easy as reviewing and signing the proposed order.

D. Discovery

1. Discovery Period and Extensions

Agreed orders are usually granted. Other extensions that don't affect the trial date are ordinarily granted. Requests that extend the trial date may require conferences.

2. Interrogatories

(a) Number Limit

Judge Wiseman has a liberal policy toward discovery, and that generally applies to interrogatories in excess of the Local Rules limit. However, before ruling, he wants to review the proposed interrogatories to make sure they are not oppressive and harassing. Interrogatories are the first volley in discovery to determine the location of witnesses and documents. Parties should try to stay within the Local Rule limit, and that is one step lawyers can take toward cutting the costs of litigation. If a case is complex, he will take that into consideration, but in the past he has denied motions to serve additional interrogatories.

(b) Instructions and Definitions

He has no problem with such prefatory matters and has never had a question concerning them come up in his court.

(c) Objections

Objections to discovery as over-broad or unduly burdensome may be sustained if the party can show that the requested discovery is only very remotely relevant, and it is pretty obviously so. All his decisions on such questions depend upon the facts, and are basically ad hoc.

3. Resolution of Discovery Disputes

Judge Wiseman does not like discovery disputes. In ruling on such motions, he will grant costs to the prevailing party because Rule 37 requires it. The amount of the award is in his discretion.

4. Confidentiality Agreements

Judge Wiseman is concerned that there is a conflict between the public's right to know and the incentive to settle cases by keeping the settlement confidential. He will make a case by case determination.

5. Expert Witnesses

The Court will consider pretrial motions in limine on the expert's qualifications. See Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786 (1993); Judge Thomas A. Wiseman, Jr., Judging the Expert, 55 Ohio St. L. J. 1105 (1994) (discussing Judge Wiseman's philosophy on expert testimony)

E. Settlement

All settlement conferences will be assigned to another district judge or magistrate judge. Judge Wiseman believes this is the only way for lawyers to be candid with the settlement judge and for the trial judge not to be influenced by what he has heard at the settlement conference.

F. Pretrial Briefs

1. Form

The pretrial brief is the last thing Judge Wiseman will read before the case begins. It should briefly state the facts, the issues, the legal bases of the claims, anticipated evidentiary problems and authorities.

2. Scope in non-jury case

The pretrial brief should include more emphasis on contested issues of fact and supporting proof anticipated than in jury case.

3. Scope in jury case

The pretrial brief should set out issues to be submitted to the jury and those the Court will have to decide.

G. Pretrial Orders

1. Form

An agreed proposed pretrial order should be jointly prepared by the parties and submitted to the Court no later than the time of the pretrial conference. The proposed order should contain a short summary of plaintiff's theory; a short summary of defendant's theory; the issues to be submitted to the judge or jury;

any procedural issues; a statement that the pleadings are amended to conform to the pretrial order and that the order supplants the pleadings; and a statement that counsel have complied with the requirements regarding the exchange of witness lists, exhibit lists, expert witness statements, depositions which are expected to be offered into evidence, etc.

2. Submission to the Court

If the pretrial order is agreed upon and no disagreements remain as to requested stipulations or authenticity of exhibits, plaintiff's counsel shall state within the pretrial order that no pretrial conference is necessary and submit it to the Court prior to the pretrial conference date. It will then be stricken from the Court's calendar by the courtroom deputy.

H. Injunctions

1. Scheduling

The Court will set the preliminary injunction hearing within ten days of the issuance of the temporary restraining order.

2. Expedited Discovery

The Court will allow expedited discovery if a case is made for it by written motion.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

The Court will schedule in advance of trial if possible, but sometimes the suppression hearing will be set on the morning of the trial.

B. Motions

Motions should be made in writing and supported by briefs or affidavits.

C. Pretrial Conferences

It is unusual to conduct a pretrial conference in a criminal case, but the Court will do so on request.

V. Trial Procedure

A. Scheduling

Trials generally will run from 9 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. Tuesdays through Fridays.

B. Out-of-Town parties, witnesses, or attorneys

The Court will try to accommodate such persons.

C. Motions in Limine

Judge Wiseman encourages these motions, even if he does not rule on them before trial, since they alert him to evidentiary issues.

D. Courtroom Decorum

Lawyers may move about the courtroom as they like. Counsel may also hand documents directly to witnesses without first passing them to the marshal.

E. Voir Dire

Judge Wiseman's method of jury selection is to put enough potential jurors in the jury box initially to equal the number of jurors to be seated plus the number of peremptory challenges. For a two or three day civil trial, a seven person jury might be selected, with each party having four strikes. Therefore, assuming this trial has one plaintiff and one defendant, about fifteen prospective jurors are initially placed into the box. Voir dire will begin with questioning by Judge Wiseman, and then he will allow counsel to question the prospective jurors. At the conclusion of the questioning, the judge will direct counsel to exercise their challenges. If both sides strike the same person, it counts against both, and more than seven persons may be left on the jury. If this occurs, the seven persons with the lowest numbers in ascending order as seated in the box will make up the jury.

F. Note Taking by Jurors

Judge Wiseman allows jurors to take notes during trial. The jurors may take their notes into the jury room during deliberation, but are not allowed to take them home at night during the progress of the trial.

G. Opening Statements

1. Length

Judge Wiseman has no time limits. Usually, however, opening statement is completed by the noon break on the first day of trial. Less often, opening statements will not be completed until after the noon break. He stated that counsel do not abuse voir dire or opening statement in his court. He has on occasion called counsel to the bench during voir dire to state that the lawyer was wearing out his/her welcome. Judge Wiseman likes opening statement and believes it can be very effective.

2. Use of Exhibits

Counsel should not use any exhibits that are known from the pre-trial order or a pending motion in limine to be objectionable. Otherwise, exhibits may be used. Judge Wiseman believes that use of exhibits in opening statements is part of telling the jury what the proof is going to be.

H. Side Bar Conferences

Ask for them and requests will be granted. Don't abuse the privilege.

I. Videotaped Testimony

Judge Wiseman likes it in preference to sterile depositions read to the jury.

J. Deposition Reading

You may ask another lawyer to read the part of the witness if you desire. It helps to separate questions from answers.

K. Exhibits

Judge Wiseman likes exhibits to be pre-labeled using the Court's own exhibit stickers, yellow for plaintiff and blue for defendant. During the trial, the Courtroom Deputy will assign the exhibit numbers sequentially, with the first exhibit introduced by plaintiff being assigned as Plaintiff's Exhibit No. 1, and so forth. The first exhibit introduced by defendant will be assigned as Defendant's Exhibit No. 1, and so forth. However, if the number of exhibits is very large, the Court may allow the exhibits to be numbered in advance. Copies of the exhibit list should be furnished to the Court, the courtroom deputy, the court reporter and opposing counsel at the beginning of the trial. Jurors may be furnished with individual copies of exhibits, provided counsel alert Judge Wiseman in advance. Lawyers should contact the courtroom deputy prior to trial in regard to the pre-marking of exhibits.

L. Witness Lists

Witness lists should be provided to the Court, the courtroom deputy, the court reporter and opposing counsel at the beginning of the trial.

M. Motions for Judgment as a Matter of Law or for Judgment of Acquittal

Such motions should be made at the appropriate time during the trial pursuant to Rule 50 of the Federal Rules of Civil Procedure and Rule 29 of the Federal Rules of Criminal Procedure.

N. Proposed Jury Instructions and Verdict Forms

Judge Wiseman likes to receive copies of proposed Jury Instructions and special verdict forms where there are unusual issues or questions. There is no need to submit standard requests. He will furnish counsel copies of his proposed instructions and verdict forms before closing argument, and a charge conference will be held. The judge asks counsel to provide proposed jury instructions to the court in two formats: (1) printed on paper and filed as a pleading in the Clerk's Office and; (2) on computer disk in WordPerfect (Windows or DOS), if possible, and submitted directly to the judge's chambers.

O. Proposed Findings of Fact and Conclusions of Law

Judge Wiseman does not require findings of fact and conclusions of law in jury cases. He may require them to be submitted in non-jury cases, if appropriate, and especially if the case is lengthy. FFCL submitted after a trial should include citations to the transcript. Judge Wiseman tries to rule from the bench at the conclusion of non-jury trials as much as possible, and reserves the right to supplement his decision in writing at a later date. He does not generally require that FFCL be submitted prior to trial.

P. Offers of Proof

When proof is excluded from jury consideration, offer of proof for appellate review may be made. In order not to delay the trial, the opportunity for this may be made during a break, at lunch or at the end of the day.

Q. Jury Deliberation

1. Copy of Instructions

A copy of the instructions is provided to counsel before closing arguments and, most often, a charge conference is held. A copy of the completed charge is given to each juror, and it may be taken into the jury deliberation room by the juror.

2. Access to Exhibits

The trial exhibits are always taken to the jury in the deliberation room immediately upon their retirement.

3. Access to Transcript of Testimony or Videotaped Testimony

This happens only on the request of the jury, and then such a request is rarely granted. To do so results in over-emphasis of parts of the testimony.

4. Availability of Counsel

During jury deliberation, counsel must advise the courtroom deputy where they may be reached in case of a verdict or question from the jury.

5. Taking the Verdict and Special Interrogatories

Judge Wiseman reads the verdict and special interrogatories to the jury and asks them if they concur.

6. Polling the Jury

Judge Wiseman almost always polls the jury.

7. Interviewing the Jury

He will allow attorneys to talk to the jurors after a verdict upon request from counsel or sua sponte. In case of a hung jury in a criminal case, he will ask the jurors what their vote was.

VI. Sentencing in Criminal Cases

Judge Wiseman follows the district's Speedy Trial Plan and the U.S. Sentencing Guidelines.

VII. Other Comments

-- Rule 37 Sanctions. He does not like discovery disputes, and that appears to be well known as not many are filed in his court. In ruling on such motions, he will grant costs to the prevailing party because Rule 37 requires it. The amount of the award is in his discretion.

-- Telephone Depositions. He favors these as a cost saving device. He also encourages lawyers to use non-stenographic recording of depositions for the same reason. In a telephone deposition, the oath can be administered by the Court reporter or notary via telephone to the witness.

-- Closing Argument. He imposes no time limit on closing. He also stated that whether a lawyer's expression of his personal opinion in closing is objectionable depends upon the context. Phrases such as "I think" and "I believe" may merely be figures of speech; if the lawyer injects himself into the deliberations of the jury, however, that is improper.

-- Responsibility of Local Counsel.

(1) Purpose. Judge Wiseman likes local counsel and wants to continue that practice. Local counsel have an ongoing relationship with the Court which is beneficial in promoting candor and mutual respect.

(2) Trial Responsibility. The Bar needs to examine the question of limited authority of local counsel, and he is open to suggestions.

(3) Rule 11 Sanctions. The local counsel situation is going to get "sticky" under Rule 11. Resolution of many of these questions will involve plowing new ground. Whether local counsel can avoid Rule 11 sanctions by having their names typed on pleadings under the designation "of counsel" rather than actually signing the pleadings is open to question.

-- Pre-Trial Conference. If an agreed pre-trial order is submitted to Judge Wiseman prior to the scheduled date of the pre-trial conference, the conference will be stricken from the calendar as being unnecessary. If, however, there are disputes as to the authenticity of exhibits, pending motions in limine, or other matters that counsel wish to bring to the Court's attention prior to trial, counsel should contact the courtroom deputy so that the pre-trial conference will not be canceled.

-- Submissions Under Seal. Matters submitted under seal obviously have to be opened and viewed by the trial judge. He suggests that the envelope should bear the inscription "maintain under seal pending consideration by trial judge" or similar language as instructions to the clerk's office. A pleading will not be "under seal" unless Judge Wiseman orders it so. Unless he orders a document sealed or there is a statute requiring it to be sealed, it will be available to the public.

-- Agreed Orders. He routinely signs these except when trial continuances are involved.

PRACTICE AND PROCEDURE MANUAL

SENIOR U. S. DISTRICT JUDGE JOHN T. NIXON

I. Brief Biography

Senior Judge John T. Nixon was appointed by President Carter in 1980. He served as Chief Judge from 1981 to August 1998, and took senior status the same month. He holds an A.B. degree from Harvard College, 1955 and an LL.B. Degree from Vanderbilt University, 1960. Judge Nixon was a Trial Attorney in the Civil Rights Division of the Justice Department 1964-69. From 1978 to 1980 he served as a General Sessions Judge in Davidson County and from 1977 to 1978 he was a Circuit Judge.

II. Preliminary General Matters

A. Scheduling

All scheduling is done with Judge Nixon's deputy clerk, Mary Conner, (615) 736-5689, except where the magistrate judge is the case manager.

B. Correspondence with Court

Judge Nixon prefers that all matters be communicated to the Court in pleadings, notices, memoranda, and briefs. If letters are absolutely necessary, the parties should be aware that they will be filed in the Clerk's Office.

C. Telephone Conferences with Court

Telephone conferences will be arranged for pretrial matters not referred to the magistrate judge if the matter involves out of town attorneys. Judge Nixon approves of telephone conferences with the magistrate judge when disputes arise during the course of depositions. He has no problem with conducting status conferences by telephone when out-of-town counsel is involved.

D. Telephone Conferences with Law Clerks

Telephone conferences with Judge Nixon's law clerks are allowed concerning the administration, but not the merits, of any case.

E. Motion to Ascertain Status

Judge Nixon states that anyone who is uncomfortable with using the Local Rule concerning a motion to ascertain the status of a case should contact Mary Conner in Judge Nixon's office to make inquiries concerning the status. Ms. Conner will make such inquiries typically without revealing the identity of the party making the inquiry.

III. Pretrial Matters - Civil Cases

A. Scheduling Orders

Scheduling of all cases filed since March 1, 1994 will be conducted by the magistrate judge.

Judge Nixon usually conducts a pretrial conference in every case, even if the pretrial order has been submitted. If parties agree that the pre-trial conference is unnecessary, however, then he may not hold one.

B. Continuances and Extensions

1. General Policy

Requests for extension of dates not affecting the trial date should be addressed to the magistrate judge. Requests for continuances of trial should be addressed to the Court.

Judge Nixon has no problem with extensions by agreement, but if the trial date would be affected, he would want a status conference. If the parties cannot agree, and the reason for the extension is something that the moving party reasonably should not have anticipated, he will grant the extension.

2. Requests

All requests for continuance and extensions should be made in a written motion.

C. Pretrial Motions

1. Referral to Magistrate Judge

Generally, pretrial motions are referred to a magistrate judge. All substantive motion will be considered by Judge Nixon.

2. Oral Argument

Judge Nixon generally believes that oral argument can be helpful in reaching a decision. Judge Nixon occasionally asks for oral argument. Oral argument must be requested in writing. He will almost always grant oral argument when requested by counsel.

3. Briefs

He has no problem with the filing of reply briefs, except it is hard to know whether one is going to be filed or not when he is planning to make a ruling. If a party desires to file a reply brief, he requests that his courtroom deputy be notified, and that the reply brief be filed within five days of the response.

4. Chamber Copies of Filings

Judge Nixon does not want extra copies of filings.

5. Proposed Orders

Generally, there is no need to submit a proposed order along with a motion. Judge Nixon prefers to write "granted" or "denied" at the end of the motion paper.

6. Expedited Ruling

The best way to obtain a quick ruling on a motion is to inform his courtroom deputy, Mary Conner. She will put that motion on top of his stack.

D. Discovery

Judge Nixon refers most discovery matters to a magistrate judge. He does not believe that any rulings by a magistrate judge on discovery questions have been appealed to him.

Telephone depositions. He permits telephone depositions, especially if impecunious parties are involved.

1. Discovery Period and Extensions

See III B 1 above.

2. Interrogatories

(a) Number Limit

Motions seeking leave to serve interrogatories in excess of the 30 allowed by the Local Rules should normally be made to the magistrate judge. Where they are made to him, he will usually grant them if they are not opposed. It is, however, worth opposing such motions, and his ruling will depend upon the subject matter of the case.

(b) Instructions and Definitions

These are acceptable as far as Judge Nixon is concerned.

3. Resolution of Discovery Disputes

Judge Nixon does not like discovery disputes and believes lawyers should always try to work them out in good faith before bringing them to the Court. He does not agree that the imposition of sanctions are required by Rule 37. He believes that it is rare that there are clear cut questions on such matters. He treats sanctions as discretionary matters, and awards them only if the party's conduct is egregious. If a party is quibbling over discovery or trying to delay the case he might lean toward sanctions.

4. Confidentiality Agreements

Those agreements and discovery matters submitted under seal should be in an envelope with a label bearing the inscription: "TO BE FILED UNDER SEAL AND HANDLED ACCORDINGLY." The envelope should be accompanied by a motion

to seal. Judge Nixon noted that when such matters are filed, they are under seal until such time as he may decide to order the matters to be unsealed.

5. Expert Witnesses

He has occasionally ordered a party to allow discovery of written reports from the party's experts, but this depends upon the circumstances. Whether the filing of the Local Rule 12(c)(6)(c) expert witness statement is required will be determined on a case by case basis. For example, Judge Nixon is reluctant to require the filing of an expert witness statement where the plaintiff is impecunious.

E. Settlement Conferences

He does not preside over settlement conferences in cases that are pending before him. When another judge refers a case to him for a settlement conference, he follows Local Rule 20.

F. Pretrial Filings

1. Form

Pretrial filings should be in the form required by the Local Rules. This applies to both non-jury and jury cases.

Findings of fact and conclusions of law are not required.

G. Injunctions

1. Scheduling

Scheduling should be coordinated with his courtroom deputy if the case is pending. If a TRO is requested at the time the case is filed every effort must be made to notify opposing counsel for any hearing on the TRO.

2. Expedited Discovery

This will be handled on a case by case basis.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Judge Nixon always conducts hearings on motions to suppress and they usually require an evidentiary hearing.

B. Motions

Typically, the only other motions in criminal trial are in limine motions which are heard at trial and motions for plea agreements.

C. Pretrial Conferences

Pretrial conferences are seldom used in criminal cases.

V. Trial Procedure

A. Scheduling

B. Out-of-Town Parties, Witnesses, or Attorneys

Judge Nixon will try to accommodate these individuals where possible without causing hardship in other cases.

C. Motions in Limine

He welcomes such motions although he rarely grants them. They are helpful in alerting him to evidentiary issues that will arise at trial. He admonishes the nonmoving party not to go into a matter that is the subject of a motion in limine until he has made a ruling.

D. Decorum

His rule is that a lawyer must stay within an arm's length of the podium. This is not just ritual, but is necessary so that the jury, judge, opposing counsel, and court reporter can all hear the lawyer. He also believes that keeping a lawyer behind the podium gives lay people witnesses and jurors a sense of protection. This, however, is not so important when the lawyer's own party or witness is on the stand.

Judge Nixon is particularly disturbed when counsel makes derogatory remarks about opposing counsel. There is simply no place for such conduct in the courtroom. He is also concerned that a few younger lawyers do not appear to be prepared on how to conduct themselves in the courtroom. They seem to be more given to a lack of civility and excessive argument with the Court on objections, jury instructions, etc.

E. Voir Dire

1. Lawyer Voir Dire

He gives attorneys a fair amount of latitude in conducting voir dire. It is appropriate to use voir dire to get information, but not to try the case.

2. Selection Method

In criminal cases, 12 potential jurors are seated, voir dire is conducted, and strikes are exercised. He then seats more jurors to return the number to 12, and the process continues in that manner until 12 jurors remain. Two alternates are then selected in the same way.

In civil cases, he uses the same method as Judge Wiseman. If more than six jurors remain seated at the conclusion of the trial, all will deliberate as the jury. The voir dire of all jurors is conducted at the same time. Each side is permitted to strike a juror. There are no "double strikes." That is to say the plaintiff and the defendant alternate in the striking of jurors.

F. Note taking by jurors

Judge Nixon permits taking of notes by jurors. However, he gives a special instruction on the use of these notes to the jurors.

G. Opening statements

1. Length

He places no time limit, but he always inquires how much time a lawyer anticipates using. A concise opening statement is a mark of good advocacy. The longest opening statement in his court has been one hour.

2. Use of Exhibits

He has permitted the use of stipulated exhibits during voir dire and opening statement, but permission should be obtained in advance.

H. Side Bar Conferences

These are permitted.

I. Videotaped Testimony

This is permitted.

J. Deposition Reading

This is permitted. Counsel may install his paralegal or co-counsel in the jury box to act as the deponent.

K. Exhibits

Upon request, he would allow the parties to include the stipulated exhibits in notebooks for the use of each juror. It is permissible to pass individual copies of exhibits to the jurors, but again permission is required.

He does not mind the use of visual aids during trial. In some cases, such as those involving important documents, it may be very helpful to use an enlarged copy of a document to highlight the critical language.

L. Motions for Judgment as a Matter of Law

Judge Nixon will often wait until the jury has returned a verdict before ruling.

M. Closing Argument

He finds it offensive for lawyers to make personal references to other lawyers during closing. There is no time limit on closing arguments; however, Judge Nixon requests that lawyers give estimates of the time they will require.

N. Proposed Jury Instructions and Verdict Forms

Counsel are advised to follow the local rules.

O. Proposed Findings of Fact and Conclusions of Law

These should be submitted ten days after a non-jury trial and should be submitted simultaneously by all parties. If a transcript of trial is ordered, the findings of fact and conclusions of law should be submitted ten days after the transcript is prepared and should contain citations to the transcript.

P. Offers of Proof

These may be made where necessary.

Q. Jury Deliberation

1. Copy of Instructions

He provides copies of the jury charge to each juror to follow along as he reads it. Jurors are instructed not to underline any portions of the charge. The jurors take the charge to the jury room.

2. Access to Exhibits

Exhibits are taken to the jury room, absent any objection.

3. Access to Transcript of Testimony or Videotaped Testimony

Judge Nixon has a problem with allowing jurors to have access to such transcripts because they unduly emphasize the portion of the testimony which is transcribed. However, access to the transcript will be given if it gives "equal treatment" to both sides (such as an entire video tape of a doctor's deposition).

4. Availability of Counsel

During jury deliberations, counsel need not be present in the courtroom. However, they should be available on short notice.

5. Taking the Verdict and Special Interrogatories

6. Polling the Jury

Judge Nixon always polls the jury.

7. Interviewing the Jury

If counsel wishes to interview the jury, a motion for leave to interview the jury should be filed. Judge Nixon is opposed to the concept of interviewing a juror who is not at the end of his jury duty and may sit on another case in that term where the same lawyer who conducts the post-trial interview in the earlier case is counsel at the later case.

VI. Sentencing in Criminal Cases

On guilty pleas and after conviction sentencing is determined by the sentencing guidelines. He expects the parties to follow the local rules on use of the presentence report and insure the defendant is fully aware of the contents of the presentence report. He always considers objections by either side to the report.

VII. Other Comments

-- Uniformity of Decision Within District.

Judge Nixon stated that it bothers the judges in this district when they reach conflicting rulings on issues. They are working on ways to become more aware of each others' decisions. The District Court Clerk's Office maintains the judges' unpublished opinions. The Court Librarian is in the process of computerizing these opinions.

-- Publishing Opinions.

If requested by an attorney in a case, the judges will usually see that an opinion is published.

-- Pet Peeve.

His primary criticism is of lawyers who practice infrequently in federal court, who often do not know the rules, do not know to stay away from the jury box, etc. It is difficult to deal with this situation without running the risk of prejudicing their cases by criticizing them in front of the jury. He has very few problems with lawyers who typically practice in his court. He is, however, bothered by some lawyers' insensitivity to the jury, particularly when they are not aware that they are putting the jury to sleep. In general, he has a high regard for the attorneys who practice before him and their level of preparation.

-- Responsibility of Local Counsel.

(1) Trial Responsibility. Judge Nixon noted that this matter comes up every time he meets with this Committee. He recognizes that the involvement of local counsel in complex matters runs up the costs of litigation. He is, however, opposed to abrogating the rule requiring local counsel because local counsel have a useful communication function. He does want to know what role local counsel will play in a case, and this can be set forth in the scheduling order. He would prefer for local counsel to be present through voir dire, but otherwise they do not need to attend a trial of a case in which they have had no substantive involvement.

(2) Rule 11 Sanctions. The purpose of this rule is to deter the filing of frivolous lawsuits. He does not think that imposing sanctions on local counsel in most cases would serve that purpose. He has imposed sanctions under Rule 11 twice. He noted that a recent study by the Administrative Office has demonstrated that the fears that Rule 11 would result in stifling creative lawsuits have not been realized.

PRACTICE AND PROCEDURE MANUAL

SENIOR U. S. DISTRICT JUDGE THOMAS A. HIGGINS

I. Name and Brief Biography

Judge Thomas A. Higgins was appointed United States District Judge for the Middle District of Tennessee in October 1984, and entered on duty December 3, 1984. He took senior status in February 1999. He was graduated from Christian Brothers College, receiving his A.A. degree in 1952; University of Tennessee, with a B.A. degree in 1954; and Vanderbilt University School of Law, receiving his LL.B. in 1957. He entered active duty as First Lieutenant in the United States Army in 1957 and was released in 1960 after serving in The Judge Advocate Generals Corps, at Fort Campbell, Kentucky, and the Pentagon.

Judge Higgins was a partner in the law firm of Willis & Higgins, Nashville, Tennessee, from 1960-61, and a partner in the law firm of Cornelius, Collins, Higgins & White from 1961-1984.

Judge Higgins is married to the former Geraldine Gallagher Crawford and has three children. He is a member of the American Bar Association; Tennessee Bar Association; and the Nashville Bar Association, of which he was secretary-treasurer in 1962, director in 1970-72, and president in 1971-72. He is a Fellow of the American College of Trial Lawyers.

II. Preliminary General Matters

A. Scheduling

Attorneys seeking changes in schedules should do so by motion. Judge Higgins will consider approving agreed orders, but he will not grant them automatically and rarely grants extensions of discovery deadlines.

B. Correspondence with the Court

The Local Rules require all communication with the Court to be filed with the Clerk's office. All correspondence relating to a case received directly by Judge Higgins' Office is filed as a part of the record.

C. Telephone Conference with the Court

Judge Higgins has no objection to telephone conferences regarding discovery disputes during depositions and pretrial conferences in cases involving out of town counsel or upon showing of good cause. Attorney requesting telephone conference shall be responsible for setting it up with the telephone operator and all parties/attorneys. There shall be no ex parte conferences.

D. Telephone Conference with Law Clerks

Judge Higgins does not permit telephone conferences with his law clerks.

E. Pro Hac Vice Admissions

Allowed if documentation is in order.

F. Motion to Ascertain Status

Judge Higgins prefers everything done in writing. He has no problem with anyone filing a motion for status.

III. Pretrial Matters - Civil Cases

A. Scheduling/Case Management Orders

See specimen copy of case management orders for jury and nonjury cases, *Appendix 1*.

B. Continuances and Extensions

Judge Higgins rarely grants continuances and extensions unless there is a valid reason. All such requests should be made by motion and should clearly state the necessity for the change.

C. Pretrial Motions

1. Referral to the Magistrate Judge

Referred depending on Court's trial calendar.

2. Oral Argument

Oral argument may be allowed if it will serve some useful purpose.

3. Briefs/Memoranda of Law

Briefs are required. On summary judgment motions Judge Higgins requires strict compliance with Local Rule 8(b)(7). The moving party is required to list the asserted facts in numbered paragraphs with record citations; opposing counsel's statements must admit or deny the moving party's asserted facts, following the same order as the moving party with a precise citation to the record. In this way, whether or not there is a dispute of fact is crystal clear to the judge.

In each supporting memorandum, the movant shall list everything in the memorandum which is being relied upon in support of the motion. Also, all affidavits and attachments which are relied upon shall be filed and docketed separately with the Clerk's office. They shall not be submitted as attachments to the memorandum of law. The memorandum of law and motion shall be filed as separate documents.

4. Chambers Copies of Filings

All papers should be filed with the clerk. If it is a matter that will need Judge Higgins' immediate attention, this should be reported to the clerk and the file can be sent to his chambers. No courtesy copies shall be sent directly to chambers.

5. Proposed Orders

These orders are helpful if there are specific facts which need to be included in the order, i.e., disbursement of funds.

D. Discovery

1. Discovery Period and Extensions

Judge Higgins expects the parties to meet the scheduling/case management order deadlines.

2. Interrogatory Responses

Judge Higgins believes that it is very important to tailor interrogatories and their responses to fit the needs of the case. See specimen case management orders for parameters. (*Appendix 1*)

3. Resolution of Discovery Disputes

Governed on a case by case basis. Judge Higgins expects good faith effort by counsel to resolve without court intervention. Counsel must try and fail to work out disputes before filing motions to compel, etc. He believes that most discovery disputes can be worked out between reasonable counsel if they use common sense.

Every case management order includes the following provision:

No motions related to discovery or for a protective order shall be filed until a discovery/protective order dispute conference has taken place and all attorneys of record attend and meet, face to face, in an effort to resolve the dispute and a jointly signed discovery/protective order dispute statement is submitted setting forth precisely the remaining issues in dispute and the reasons why those issues remain unresolved.

4. Confidentiality Agreements/Rediscovery Matters

Usually approved as a matter of course. However, Judge Higgins generally will not approve the sealing of settlement agreements unless there is some compelling reason.

5. Expert Witnesses

Judge Higgins requires strict adherence to Local Rule 12.

E. Settlement Conferences in Jury and Nonjury Cases

Judge Higgins is agreeable to settlement conferences and they can serve a useful purpose only if the lawyers have first engaged in honest and hard bargaining.

F. Pretrial Briefs

1. Form

Judge Higgins encourages lawyers to write their papers with the thought that they are trying to convince someone, and that someone is actually going to read the papers and wants to make sense of them. Cases are expected to stand for the legal propositions for which they are cited, and lawyers should provide further explanation and analyses as needed. No brief in support of or in opposition to any proposition should exceed twenty (20) pages. The scheduling/case management order precludes the filing of reply briefs unless invited by the Court.

2. Scope in Nonjury case

Requires proposed findings of fact and conclusion of law to be submitted to the courtroom deputy (not filed with the Clerk's office) by close of business the day preceding the trial or as directed by order of the Court.

3. Scope in Jury Case

Briefs should cover any unique evidentiary issues anticipated and should include counsel's position and authorities in support of that position on anticipated questions of law. Attention should be given to any special jury verdict forms or jury instructions.

G. Pretrial Conference

Judge Higgins will schedule a status conference if requested or if he believes it is needed. However, his normal procedure is to schedule a pretrial conference to discuss trial procedures and any final attempt by the Court to settle the case. Even if attorneys have submitted a proposed pretrial order before the pretrial conference, they will be expected to attend the pretrial conference unless released by order of the Court.

H. Injunctions

1. Scheduling

TROs are scheduled by the clerk; Preliminary Injunctions are scheduled on written application and are heard on oral testimony. Written Proposed Findings Of Fact And Conclusions Of Law are required to be filed prior to preliminary injunction hearing.

2. Expedited Discovery

Judge Higgins will decide this based on facts of each case.

IV. Pretrial Matters - Criminal Cases

A. Suppression Hearings

Judge Higgins schedules these hearings well in advance of the trial date and makes every effort to hold the evidentiary hearing so as to avoid delays as to trial. If necessary, the evidentiary hearing will be held on Saturday.

B. Motions

Motions shall not be filed if the matter is covered by the standing discovery order.

C. Pretrial Conference

Judge Higgins will schedule a pretrial conference if requested or if he believes it is needed.

V. Trial Procedure

A. Scheduling

Judge Higgins is aware that matters are sometimes delayed because of other court proceedings. However, he believes that the only way to move the docket is to set many matters and to "keep the pipeline full."

B. Out-of-Town Parties, Witnesses, or Attorneys

Local counsel are expected to be ready to try the case.

C. Motion in Limine

Judge Higgins will usually reserve ruling on these motions until trial.

D. Voir Dire

Judge Higgins conducts the initial Voir Dire, and attorneys are permitted to ask appropriate follow-up questions so long as there is no attempt to try the case or brainwash the jury.

E. Note-Taking by Jurors

Judge Higgins permits jurors to take notes in every case.

F. Opening Statements

1. Length

Judge Higgins sets no time limit; however, opening statements should be direct and without any argument by counsel.

2. Use of Exhibits

Counsel should show exhibits to be used during open statements to adversary counsel and the Court prior to beginning opening statement.

G. Side Bar Conferences

Judge Higgins holds side bar conferences to avoid having the jury leave the courtroom unless it is a complicated matter that will take considerable time.

H. Videotaped Testimony

This type of testimony is permitted. Attorneys should ensure that a properly edited tape is available to show to a jury.

I. Deposition Reading

Both questions and answers should be read when deposition testimony is presented in a jury trial. In a nonjury trial simply submit it to the Court if it is lengthy.

J. Exhibits and Witnesses

Exhibits should be pre-marked and furnished to opposing side. Copies of each party's exhibit list and witness list shall be provided to the courtroom deputy, court reporter and opposing counsel on the first day of trial.

K. Motion for Verdict as Matter of Law

These motions should be made in the normal course under the Federal Rules of Civil Procedure.

L. Proposed Jury Instructions and Verdict Forms

Attorneys shall furnish requested instructions and verdict forms to the Court on the morning of the first day of trial.

M. Proposed Findings of Fact and Conclusions of Law

Judge Higgins requires proposed findings of fact and conclusions of law to be submitted directly to the courtroom deputy (not filed with the Clerk's office) by close of business the day preceding the trial or as directed by order of the Court.

N. Offers of Proof

To avoid delay, Judge Higgins will sometimes schedule offers of proof at the end of the day.

O. Jury Deliberation

1. Copy of Instructions

The jury instructions will be provided counsel before they argue their case at a charge conference at the conclusion of all the evidence. The jury is furnished with copies of the court's charge.

2. Access to Exhibits

All admitted exhibits, subject to No. 3 below, will be sent to the jury room.

3. Access to Transcripts of Testimony or Videotaped Testimony

Usually Judge Higgins will not permit the jury access to such transcripts or videotapes during its deliberations.

4. Availability of Counsel

Counsel must be available to appear in court without delay while the jury is deliberating.

5. Taking the Verdict and Special Interrogatories

6. Polling the Jury

Judge Higgins will always poll the jury individually on their findings.

7. Interviewing the Jury

Judge Higgins will not allow this unless a good reason is advanced for allowing interview in specific case. See Local Rules of Court.

VI. Sentencing in Criminal Cases

Judge Higgins requires the attorney and defendant to go over the pre-sentence report together well in advance of sentencing.

VII. Other Comments

PRACTICE AND PROCEDURE MANUAL FOR
MAGISTRATE JUDGE JULIET GRIFFIN

I. NAME AND BRIEF BIOGRAPHY

Judge Griffin was appointed U.S. Magistrate Judge in 1995. She was graduated from Oberlin College in 1971 and from the University of Tennessee College of Law in 1978, where she was a member of the Order of the Coif and served as Editor-in-Chief of the Tennessee Law Review. Upon graduation, Judge Griffin served Judge Wiseman as one of his first law clerks. Judge Griffin worked as a Staff Attorney for Legal Services of Middle Tennessee for several years before being appointed U.S. District Court Clerk in 1985.

II. PRELIMINARY GENERAL MATTERS

A. Case Management and Scheduling

Like the other two Magistrate Judges, Judge Griffin is assigned all cases for case management that are assigned to Judge Echols, Judge Campbell, Judge Wiseman, and Judge Nixon, and those cases already assigned to the Magistrate Judge for case management that have been reassigned to Judge Trauger. Case management under Local Rule 11 is initiated by the Rule itself. The clerk issues a notice of the first case management conference before Judge Griffin, which the party filing the initial complaint (or notice of removal) is required to serve upon the opposing parties.

Judge Griffin views the case management process as an opportunity to refine and define the issues at an early stage, to discuss early settlement potential, and to consider phasing discovery as needed for consideration of settlement, filing dispositive motions and trial preparation. The initial case management conference, as well as subsequent case management conferences, can be used to determine what discovery can be provided by informal means (even during the case management conferences themselves) without the necessity of and unnecessary delay attendant to formal discovery processes. The case management conferences can also be used to anticipate disputes that may arise during the pendency of the case. Judge Griffin hopes that the case management process will provide a forum for the bar to think creatively about the management of their lawsuits in an effort to reduce both the expense and delay of lawsuits.

Judge Griffin normally requires that a lawyer representing each party appear in person at least at the initial case management conference. Such lawyer need not be local counsel or the lead lawyer as long as he or she is knowledgeable about the case and can commit to specific scheduling. Judge Griffin believes that it is important for in-person appearances at least for the initial case management conference because the case can be more adequately addressed and discussed in person and because it gives counsel an opportunity to actually confer in person. However, if extraordinary circumstances make it particularly burdensome or the needs of the case do not justify personal appearances (e.g., the parties want to stay all proceedings to explore settlement), Judge Griffin will consider a motion to schedule the initial case management conference by telephone. In that event, a proposed initial case management order should be submitted prior to the telephonic case management conference. A copy may be submitted by facsimile (615-736-7070).

Pursuant to Rule 11(d)(1)(b), the parties must confer prior to the initial case management conference and submit at the initial case management conference a proposed case

management plan. Judge Griffin prefers that a proposed initial case management order (rather than a document captioned "case management plan") be submitted, and that such proposed order include a recitation of the parties' respective theories of the case, issues in dispute, issues that have been resolved, proposed deadlines by which pretrial activities shall be accomplished, and other relevant provisions set forth in Local Rule 11(d)(1)(c) and Rule 11(d)(2). A recitation of the anticipated witnesses and exhibits is helpful and encouraged but not required.

It is not necessary that the initial case management order be submitted to the Clerk in advance of the initial case management conference. In fact, it normally delays the entry of an order. The preferable practice is to simply submit the proposed order at the initial case management conference.

Judge Griffin asks that lawyers refrain from using a stock case management order including captions that have no relevance to the lawsuit, and instead encourages the parties to think through these issues in drafting such orders and to consider phasing discovery for the relevant stages of the case, when appropriate. She notes that, when lawyers have not conferred in advance and do not submit a proposed case management order, the initial case management conference may be unnecessarily prolonged or rescheduled. Toward the goal of acquainting the court and the attorneys with the case and the anticipated issues that will arise, she will review the proposed case management order with the attorneys during the first case management conference. Judge Griffin holds initial case management conferences even when all lawyers agree to the proposed case management order.

Although, under Local Rule 11(d)(1)(b), it is the responsibility of the plaintiff's lawyer to initiate communication with other counsel, if the defendant's lawyer has not heard from plaintiff's lawyer before the initial case management conference, Judge Griffin strongly encourages defendant's counsel to take the initiative of calling or otherwise communicating with plaintiff's counsel. Otherwise, the lawyers will appear at the initial case management conference without a proposed order and without having conferred with each other, rendering the initial case management conference less than effective.

Discovery is stayed pending the initial case management conference. However, that does not mean that the parties cannot serve discovery or schedule depositions. It also does not mean that the party upon whom written discovery has been served automatically gets another 30 days from the initial case management conference to respond to the discovery. One purpose of the automatic stay of discovery prior to the initial case management conference is to allow the parties the opportunity to review any discovery served and raise any objections about the scope of the requested discovery in light of the needs of the case and/or phasing of appropriate stages of the case. The stay is not designed simply to allow counsel to put aside the written discovery to be reviewed only after the initial case management conference. See III(D)(6) below on lifting the stay of discovery.

Although submission of an initial case management plan/order is required under Local Rule 11, there are circumstances under which it makes little sense to spend the time and money drafting one for the initial case management conference. For instance, if the parties have agreed to an immediate mediation or settlement conference, or, if they agree that a motion to dismiss should be resolved prior to engaging in any discovery, submission and entry of an initial case management order could be deferred.

The initial disclosures required by Judge Griffin will not automatically be the same as Rule 26(a), and counsel should be prepared to discuss at the initial case management

conference items that should be included or excluded from the initial disclosures, and what disclosures can be made through informal processes.

Subsequent case management conferences will be scheduled depending upon the needs of the case. For instance, a subsequent case management conference will be scheduled if additional defendants will be added or have not yet been served. Subsequent case management conferences may also be scheduled after completion of particular stages of a case to assess the potential for settlement, determine whether a dispositive motion will be filed, to address further discovery, etc. A final case management conference will be scheduled, in accord with Local Rule 11(d)(6), at the conclusion of all pretrial activity so that the final pretrial matters, including the scheduling of a trial date, set in consultation with the District Judge, can be scheduled. In accord with Local Rule 11(d)(5), a trial will not be scheduled until all dispositive issues are resolved, the possibility of settlement has been explored and determined to be futile, and most, if not all, discovery has been completed. At that time, a trial date will be scheduled firmly before the District Judge to whom the case is assigned.

B. Correspondence with Court

Correspondence with the Court is not contemplated by the Federal Rules or the Local Rules. Correspondence should not be sent to the Court unless specifically directed. Any matter raised in a letter that would originally be an appropriate issue for a motion should be raised in a motion. Attorneys should call Ms. Jeanne Cox, courtroom deputy, at 736-5164, for any scheduling matters.

C. Telephone Conference with Court

Judge Griffin prefers to have conferences and hearings in the courtroom. However, if the case involves out-of-town lawyer(s) or if the conference is simply to convey to the court the status of a case, a telephone conference may be acceptable with prior approval.

D. Telephone Conference with Law Clerks

All calls should be placed with Judge Griffin's courtroom deputy, Jeanne Cox. If Ms. Cox is not available, messages may be left with a law clerk.

E. Pro Hac Vice Admission

For a case assigned to Judge Griffin, no motion for pro hac vice admission needs to be filed. The filing of a certificate of good standing signed by the clerk of another U.S. District Court is sufficient.

Counsel are reminded of the provisions of Rule 1 dealing with Notices of Appearance and requiring the designation of one attorney per law firm to whom the clerk's office should send all orders.

F. Briefs

Briefing schedules are proper for discussion at the case management conferences. Judge Griffin normally sets specific dates for filing briefs and responsive materials (including memoranda in support of a motion, in response to a motion, and in reply to the response, if necessary). Judge Griffin does not have set page limits.

G. Miscellaneous

All pleadings, motions, briefs, and other filings should contain the telephone number of the attorney or pro se party submitting the filing.

III. PRETRIAL MATTERS - CIVIL CASES

A. Dispositive Motions

Judge Griffin is referred dispositive motions for report and recommendation by some District Judges, at their discretion. She will also rule on dispositive motions when the parties consent to trial before a magistrate judge.

Under Local Rule 8(b), motions for summary judgment must be accompanied by a separate statement of undisputed facts and each such fact must include specific citations to the record. Judge Griffin encourages attorneys to deliver to the opposing attorney the initial statement on a disk to ease the burden on the responding party so that the responses can be included on the same document. When the responding attorney files the 8(b)(7) response, a cover document should clearly indicate that it is the non-moving party's response. Judge Griffin also encourages the parties to attempt to agree upon a joint, stipulated set of undisputed facts, obviating the need for separate filings, if there are no genuine issues of material fact and the motion or motions are to be decided only as a matter of law.

B. Continuances and Extensions

If appropriate, Judge Griffin will hold the initial case management conference even if all the defendants have not filed answers. Requests for rescheduling of case management conferences will be accommodated to the extent possible. All requests for rescheduling should be directed to Jeanne Cox, the courtroom deputy.

If a request for an extension or continuance is granted by telephone, the attorneys will generally be requested to submit an agreed order reflecting the change.

It should be noted that, when a party requests a continuance of the initial case management conference, the stay of discovery remains in effect, pursuant to Local Rule 11(e)(1)(a), until the initial case management conference unless otherwise ordered by the court.

Judge Griffin encourages lawyers to consult with Ms. Cox before filing a motion to continue or agreed order continuing a hearing so that a specific rescheduled date can be included in an order. Otherwise, the chance is great that the rescheduled date for a conference or hearing is just as problematic as the first date.

C. Pretrial Motions

1. Form of Motions

The local rules should be followed.

2. Referral to Magistrates Judges

Discovery and other pretrial motions within the ambit of case management are heard by Judge Griffin in the cases for which she is the case manager. It is not necessary for the parties to include a provision in the case management order consenting to such referrals. They are automatic and do not need the parties' consent.

3. Oral Argument

If a party requests oral argument, Judge Griffin will generally grant the request.

4. Chamber Copies of Filings

Copies of materials should not be delivered to chambers unless the court requests otherwise.

5. Proposed Orders

It is not necessary to accompany a motion with a proposed order.

6. Agreed Motions

If all parties agree to a motion, the motion should so provide. Otherwise, there is no way of knowing whether there will be any opposition and the motion will normally be suspended for the 10 day answer period. Alternatively, an agreed order can be submitted. It is not necessary to accompany an agreed order with a motion.

D. Discovery

1. General

All discovery issues and any other non-dispositive issues will be considered by the Magistrate Judge who serves as case manager.

2. Discovery Period and Extensions

Through case management, Judge Griffin attempts to schedule the discovery necessary for each phase of the case, if appropriate, and to set realistic deadlines. Reasonable requests for extensions will be granted. Agreed orders will usually be entered if reasonable.

If agreed orders for extension of discovery or other deadlines are submitted, they should include a concomitant extension of all other affected deadlines. Otherwise, for instance, the discovery deadline may end up being extended beyond the dispositive motion filing deadline, when that was not contemplated in the original order.

3. Interrogatories/Responses

(a) Number Limit

Local Rule 9(a)(2) allows 30 interrogatories per set, but there is no longer a limit on how many sets of interrogatories can be served. If the needs of a case dictate more than (or fewer than) 30 interrogatories, such issues should be raised at a case management conference, or, if that is not practical, by motion or proposed agreed order.

(b) Objections

Objections should be stated in conformance with the federal rules of civil procedure. Rule 33(b)(4) requires the statement of objection with specificity and the basis therefor.

4. Resolution of Discovery Disputes

Every effort should be made by the attorneys to resolve discovery disputes before bringing them to the court's attention. Rule 37(a)(2) of the Federal Rules of Civil Procedure and Local Rule 9(e) require that the parties confer in good faith prior to the filing of a motion to compel and the moving party so certify. Judge Griffin is, however, available to hear discovery disputes, after the parties have conferred in good faith, during case management conferences, specially set hearings, by motions without hearings or, if necessary and practical, by telephone conference calls. Further, some discovery disputes can be anticipated in advance and resolved early in the proceedings.

Judge Griffin does not require that the lawyers convene a telephone conference call with her before filing a discovery motion. However, if the motion seeks relief that needs immediate attention or can be addressed easily, the parties are encouraged to schedule a telephone conference. For instance, it makes little sense to file a motion to quash a deposition subpoena for a deposition scheduled within the next 1-2 days, when the motion itself will not get to Judge Griffin's attention until after the scheduled date for the deposition.

5. Motions to Compel and Rule 37 Sanctions

Judge Griffin will hear motions to compel during case management conferences or specially set hearings.

Sanctions may be granted in appropriate circumstances. Repeated failures to respond or comply may be grounds for sanctions.

Judge Griffin is unlikely to award sanctions on motions to compel if the lawyers (or parties) have not actually talked to each other and/or have not advised opposing counsel that they will move to compel. Attorneys frequently file motions to compel, attesting to having written letters or faxed memos to or left messages with opposing counsel, without actually talking to opposing counsel and/or with little time for opposing counsel to return phone calls.

6. Requests for Expedited Discovery

Requests for lift of the stay of discovery that is in effect before the initial case management conference will be considered if the attorney submits the discovery to be sought, the need for expedited discovery, and the date by which the discovery is needed. If all parties are represented, the initial case management conference can be rescheduled earlier or the parties can schedule a phone call with Judge Griffin. Alternatively, if the parties agree to begin discovery before the initial case management conference, Judge Griffin will sign any agreed order submitted.

7. Requests for Expedited Determination

If a discovery motion raises a time-sensitive issue, counsel are encouraged to schedule a conference call with Judge Griffin. See subsection § 4 above. As indicated above in § III(D)(6), motions are normally suspended to allow the other party to respond. Thus, a time-sensitive motion may not even get to Judge Griffin's attention until the time to respond has run unless a conference call is scheduled.

8. Telephone Depositions

Telephone depositions are encouraged.

9. Instructing Witnesses Not to Answer

Attorneys are not to instruct a witness not to answer a question in a deposition unless the response would require the violation of a testimonial privilege.

10. Confidentiality Agreements

The party seeking to protect a document or a fact from discovery because it is "confidential" bears the burden of proving confidentiality. Agreed confidentiality orders will generally be entered if they comply with Procter & Gamble Co. v. Bankers Trust Co., 78 F.3d 219 (6th Cir. 1996), and Brown & Williamson Tobacco Corp. v. Federal Trade Comm'n, 710 F.2d 1165 (6th Cir. 1983).

E. Settlement

1. Who Presides

For cases referred to Judge Griffin for case management, the presumption is that Judge Griffin will refer the settlement conference to Magistrate Judge Haynes or Magistrate Judge Brown unless the parties all agree that they want Judge Griffin to preside over the settlement conference or that they want a District Judge to preside. Judge Griffin views the selection of a judge to preside over a settlement conference as an appropriate use of forum shopping and encourages lawyers to consider selecting the presiding judge in terms of each particular case.

2. Procedure.

Settlement conferences are governed by Local Rule 20. Judge Griffin requires that all individual parties be present with full settlement authority and all

corporate parties must be present with representatives present with full settlement authority unless prior approval is otherwise obtained.

The attorneys are requested to give a short opening statement in the courtroom with everyone present. Thereafter, Judge Griffin meets with the parties separately.

If settlement is reached, Judge Griffin prefers that a settlement agreement be executed before the parties leave the courthouse. She warns that her settlement conferences tend to take a long time.

F. Pretrial Briefs

Pre-trial and trial procedures will be set forth in case management and/or pretrial orders. The provisions of Local Rule 11(b)(10)-(15), in effect prior to March 1, 1994, will be incorporated, as appropriate to the individual case, into such orders.

G. Injunctions

Requests for injunctive relief are normally not heard in case management cases by Judge Griffin for the same reason that dispositive motions are not normally heard in the first instance under Local Rule 11(f)(1).

IV. PRETRIAL MATTERS - CRIMINAL CASES

In felony cases, suppression motions and pretrial matters will be heard by the District Judge. In misdemeanor cases upon consent, Judge Griffin will handle all such pretrial matters.

V. TRIAL PROCEDURE

Trial procedures are relevant only in consent cases. The trial will be scheduled at the final case management conference.

A. Scheduling and Location

Judge Griffin will attempt to schedule trial times to accommodate the schedules of the lawyers, taking into account the jurors' schedules and the imposition on the jurors.

B. Out-of-Town Parties, Witnesses, or Attorneys

Similarly, Judge Griffin will attempt to accommodate any scheduling conflicts with out-of-town parties, witnesses or attorneys.

C. Motions *In Limine*

Judge Griffin strongly encourages the use of motions in limine, and will set deadlines for filing the motions and responses thereto in advance of trial.

D. Courtroom Decorum

In case management conferences, it is acceptable to remain seated since one goal of a case management conference is to facilitate an open exchange of ideas.

E. Voir Dire

Attorneys will be allowed to conduct voir dire, after Judge Griffin conducts preliminary voir dire. If the lawyers want her to conduct more extensive voir dire, she will do so upon request prior to trial.

Judge Griffin is amenable to considering any method of jury selection, although she has most frequently used the standard method of seating 6 or more in the box, excusing any of those jurors for cause or peremptorily, seating substitute jurors, and excusing from those jurors recently seated. Judge Griffin will consider allowing back striking, upon the parties' request.

F. Note Taking by Jurors

Will be allowed. Judge Griffin will consider any objection by the parties to allowing the jurors to take notes.

G. Opening Statements

1. Length

There is no standard length.

2. Use of Exhibits

Counsel are permitted to use exhibits in opening statements.

H. Side Bar Conferences

Are allowed, although lawyers should realize that the courtroom is small and discussions during side bar conferences could be overheard by the jury. Judge Griffin would prefer to minimize the necessity for repeated side bar conferences, particularly if anticipated issues could be considered outside of the presence of the jury.

I. Videotaped Testimony

Objections, attorney argument, and irrelevant testimony should be edited before the trial. Opposing counsel shall be allowed to review the edited videotape before it is presented.

J. Deposition Reading

This is allowed.

K. Exhibits

Exhibits are to be pre-marked with exhibit tags supplied by the Clerk. Yellow tags are to be used by the plaintiff; blue tags are to be used for the defendant.

L. Expert Witnesses

Judge Griffin will not require the parties to comply with Local Rule 12(c)(6)(c), unless the parties ask that the rule apply.

M. Motions for Judgment as a Matter of Law

If practical, counsel shall submit a brief with such motion. The parties should, if practical and appropriate, apprise the court in advance of any such anticipated motions.

N. Proposed Jury Instructions and Verdict Forms

Judge Griffin encourages submission of proposed jury instructions and will set deadlines for their submissions prior to trial. If appropriate, she will also hold a pre-charge conference before trial and/or before the jury charge is finalized.

O. Proposed Findings of Fact and Conclusions of Law

These are required after the trial in non-jury cases.

P. Offers of Proof

Are allowed.

Q. Closing Argument

There is no standard length, but Judge Griffin will set time limits if appropriate and/or the lawyers request such limitations.

R. Jury Deliberation

1. Copy of Instructions

A copy will be available for the jury.

2. Access to Exhibits

Exhibits are available for the jury.

3. Access to Transcript of Testimony or Videotaped Testimony

Generally these will not be made available to the jury.

4. Availability of Counsel

Judge Griffin will attempt to accommodate counsel's schedules and will not require lawyers to wait for extended periods of time in the courthouse. Counsel will be called to return to take the verdict or appear when the jury has questions.

5. Polling the Jury

The jury will be polled upon request of counsel.

6. Interviewing the Jury

Local Rule 12(h) applies and Judge Griffin will consider requests for permission to interview the jury after a trial.

VI. SENTENCING IN CRIMINAL CASES

Judge Griffin handles sentencing in misdemeanor cases upon consent.

VII. MISCELLANEOUS

A. Responsibility of Local Counsel

Judge Griffin believes in the importance of Local Rule 1(h), which requires local counsel. She will, therefore, be reluctant to relieve a party from the requirements of this rule and will consider waiving the rule only if compliance will present an undue hardship on a party or for other unusual reasons.

B. Rule 11 Sanctions

Sanctions are more likely to be awarded under Rule 16 or Rule 37 than under Rule 11. With the safe harbor provision in mind, counsel should notify the opposing party when a motion for Rule 11 sanctions is filed. Judge Griffin has assessed sanctions under Rule 16 and 37, but has assessed sanctions under Rule 11 only once.

C. Submissions Under Seal

Lawyers should file papers under seal only with advance permission of the court. The under seal filing should be accompanied by a copy of the order granting the request to file under seal, by the applicable protective order, or by specific reference thereto.

D. Submissions in Camera

Upon direction, submissions may be made for in camera inspection directly to Judge Griffin's office. They will not be made part of the Court file, and will be returned to the submitting party after review and resolution of the dispute at issue.

E. Agreed Orders

No extra press copy is needed.

PRACTICE AND PROCEDURE MANUAL

U.S. MAGISTRATE JUDGE JOE B. BROWN

I. Brief Biography

Judge Brown was appointed U.S. Magistrate Judge in August, 1998. He was graduated from Vanderbilt University in 1962 and from Vanderbilt University Law School in 1965. He was Legislation Editor of the Law Review and a member of the Order of the Coif. Upon graduation he entered the U. S Army and served on active duty for 6 years as a legal assistance officer, trial and defense counsel, chief of military justice at Fort Gordon, Georgia and Military Judge at Fort Knox, Kentucky. He then joined the U.S. Attorney's Office in Nashville, where he served Assistant and First Assistant from 1971 until 1981 when he was appointed U.S. Attorney. The majority of his work was in Criminal Law. In 1991 Judge Brown was appointed a Special Assistant U.S. Trustee and was the National Coordinator for Bankruptcy Fraud for the U.S. Trustee program, Department of Justice.

II. Preliminary General Matters

D. Case Management and Scheduling

Judge Brown is assigned cases for case management the same as Judges Haynes and Griffin. Case management, under Local Rule 11, starts with the setting of a case management conference before the appropriate Judge or Magistrate Judge approximately 45 days after the suit is filed or removed. Counsel for the plaintiff is responsible for serving the notice on the opposing party. Cases instituted by pro se plaintiffs and filed in forma pauperis will usually be referred to a Magistrate Judge for a frivolity review before process is ordered served on the defendant.

Judge Brown tries to use the initial case management conference as the first step in resolving the case as quickly and efficiently as possible. The parties should have met and discussed the case before the conference. If service of process has just been made or had not been made, counsel for the plaintiff should request a delay in the conference. No real purpose can be served if the parties have not had an opportunity to confer before the conference. Counsel should look at the conference as a time to discuss their case with the Judge and try to lay out an orderly plan for case management. No two cases are exactly the same and the proposed management plan should reflect a tailoring of the plan to the needs of the case. Some cases may be amenable to a quick dispositive motion that can and should be filed before there is any real discovery. Other cases may need only limited discovery before a dispositive motion can be filed. Other cases may be clear on liability and need only discovery on damages. Some cases may be ready for an early settlement conference or other form of alternative dispute resolution (ADR). Many cases may be able to proceed to an early resolution with written discovery before depositions are required. Counsel should meet and discuss the issues in their case and come to the conference with a plan that is tailored to their case. Counsel who show up at the initial case management meeting without a plan can expect to spend some time in court working one out, or they will be required to come back for a second meeting when they are prepared.

Local Rule 11 sets out the matters that should be covered in the proposed case management order. A plan and order that sets out clear, concise theories of the parties and the issues to be resolved can be of great help to both the court and the parties in determining the best course of action for the remainder of the case. Local Rule 11 gives an outline for the content of the plan and order. However, counsel should use it as a

guide and not a binding form. If a particular heading is not relevant to the particular lawsuit, it should be left out or at least noted not to be relevant. The initial plan and order is just that - an initial plan. Counsel should submit changes as needed. No lawsuit ever proceeds exactly as planned and Judge Brown will be glad to have subsequent case management meetings and to revise the initial order as needed to meet the needs of the case.

Deadlines set in the initial order should be realistic. Judge Brown will normally approve any reasonable deadlines proposed by counsel for written discovery, depositions, disclosure of experts under Rule 26, dispositive motion deadlines, and deadlines for amending pleadings, etc. If counsel need to change the deadlines, they should submit an agreed order or a motion with reasons **before** the deadline passes. Judge Brown does not like deadlines to be ignored and request for changes to come in **after** the deadline has passed.

Judge Brown requests that the scheduling order include a paragraph that states discovery dispute motions will not be filed until the counsel have scheduled and conducted a telephone conference about the dispute with Judge Brown.

Additional case management conferences will be set as needed, and a final case management conference will be set in accordance with Local Rule 11(d)(6) at the conclusion of all pretrial activities. The final order will set the scheduling for filing exhibits and witness lists, final pretrial orders, schedules for submitting jury instructions, motions in limine, and will set a trial date in consulting with the District Judge, if consent to proceed before the Magistrate Judge had not been filed. Normally the trial date will not be set until all dispositive motions are resolved, all settlement possibilities have been explored, and discovery completed. Local Rule 11(d)(5). The district judge will normally schedule a final pretrial conference with the parties a short time before the trial date.

E. Correspondence with the Court

Correspondence with the court is not normally needed or authorized by the rules. There may be times when the court will request something be done by correspondence with a copy to opposing counsel. In those cases a copy of the correspondence will be kept in the case file maintained by the clerk. Attorneys should call Ms. Tina Smith, the courtroom deputy, at (615) 736-7052, for any scheduling matters.

F. Telephone Conferences with the Court

Judge Brown has no objection to having telephone conferences where there are out-of-town counsel, or where the matter is a simply one that involves case status or some other simple matter. Judges Brown's courtroom, 776, will have the capability of having a telephone conference with most counsel in court and one or more attorneys on a conference call. Judge Brown encourages telephone conferences whenever it is possible to resolve the matter without formal motion and reply.

G. Telephone Conference with Law Clerk

Scheduling matters should go to the courtroom deputy, Tina Smith, or in her absence to the Judge's secretary, Ms. Pat Whitley (615) 736-2119. Procedural and administrative question may be directed to the law clerk, (615) 736-2119. However the law clerk cannot and will not give legal advice or discuss the merits of the case. Message may be left with any of the judges staff. The chambers fax number is (615) 736-2121.

H. Pro Hac Vice Admissions

No motion for pro hac vice admission is required if a certificate of good standing from another district court clerk is filed. If a motion is filed, it will be granted provided it meets the requirements of Local Rule 1.

Counsel are reminded that local counsel must be designated and that one counsel per law firm must be designated for the clerk to send orders to.

I. Briefs

Briefing schedules are proper for discussion at case management conferences. Specific dates are normally set. Long briefs are not favored and page limits may be set. A short brief and reply on unusual aspects of a case are appreciated. Reply briefs should rarely be needed.

J. Miscellaneous

Judge Brown does not like to let any matter pass without setting a follow-up date or deadline. Judge Brown will respond to any counsels motion to ascertain the status of a case under Local Rule 8(b)(8). Matters will at times fall through the crack and this motion will insure that does not happen. Filing such a motion will not be held against an attorney, it simply shows the attorney is concerned about the case.

III. Pretrial Matters- Civil Cases

A. Dispositive motions.

Judge Brown is referred dispositive motions for a report and recommendation by the district judges as they see fit. Normally pro se plaintiff's and prisoner's litigation will be left with the Magistrate Judge for a report and recommendation.

Under Local Rule 8(b), motions for summary judgment must be accompanied by a separate statement of undisputed facts and each fact must include specific citations to the record. Attorneys are encouraged to deliver to the opposing attorney the initial statement on a computer disk to ease the burden of the responding party and to insure that the responses can be made on the same document. These statements are meant to concern undisputed facts and parties on both sides must resist the temptation to turn them into arguments about the facts and the case.

In pro se cases, attorneys should always allow sufficient space for the pro se party to respond and should type in the word RESPONSE after the question.

B. Continuances and Extensions

Requests for rescheduling or extensions should be made to the courtroom deputy, Ms. Tina Smith. Reasonable requests will be granted to the extent possible. Last minutes request (less than three days) should be avoided if at all possible.

If requests for extensions or continuances are made by telephone, the attorney requesting the change should submit an agreed order reflecting the change.

If a party requests a change in the initial case management conference, the stay of discovery, pursuant to Local Rule 11(e)(1)(a), will remain in effect unless otherwise ordered by the court.

C. Pretrial Motions

1. Form of Motions

The local rules should be followed.

2. Referrals to Magistrate Judges

This will differ depending on the district judge and the nature of the case. The Magistrate Judges will normally handle the majority of non-dispositive motions. Whether stated in the order deciding the non-dispositive motion or not, the parties have ten days to file an objection with the district court under Rule 203(d)(2).

3. Oral Argument

If a party requests oral argument, the request will normally be granted.

4. Chambers Copies of Filings

Copies of materials should not be delivered to chambers unless requested by the court. At times, on a short deadline, a copy may be delivered to chambers. All copies delivered to chambers should be clearly marked "Chambers Copy."

5. Proposed Orders

They may be submitted to the court as an aid, however unless requested they are not required or encouraged.

6. Resolution of Motions Before Trial

Under Local Rule 11(d)(5), all dispositive issues, all discovery, and all settlement negotiations must be completed before a case is set for trial, unless the district judges directs otherwise.

D. Discovery

1. General

All discovery issues and other non-dispositive issues will be considered by the Magistrate Judge who serves as the case manager and as otherwise directed by the district judge

2. Discovery Period and Extensions

Case management should set reasonable deadlines for each stage of discovery as appropriate. Reasonable requests for extensions will be granted. Agreed

orders will be granted so long as they are reasonable. Proposals to delay proceeding indefinitely will not be considered.

3. Interrogatory/Responses

(a). Number Limit

Local Rule 9(a)(2) allows 30 interrogatories total, regardless of the number of sets. If the needs of the case dictate more than 30 interrogatories, such issues should be raised at a case management conference, or in that is not practical, by motion or a proposed agreed order.

(b). Instructions and Definitions

Judge Brown will not normally be involved in these unless there are objections. As a matter of comment, many counsel use boiler plate for these that need serious tailoring and reduction. Some of the instructions and definitions make little sense to anyone.

(c). Objections

Objections should be stated in conformance with the Federal Rules of Civil Procedure. Rule 33(b)(4) requires the statement of objections with specificity and the basis therefor. Long speeches and speaking objections should not be made. Counsel should not make objections just for the sake of objecting.

4. Resolution of Discovery Disputes

Every effort should be made by the attorneys to resolve discovery disputes before bringing them to the court for resolution. Rule 37(a)(2) of the Federal Rules of Civil Procedure, and Local Rule 9(e) require the parties to confer in good faith prior to filing a motion to compel and the moving party must certify they have complied. The case management order should require that the parties schedule and conduct a telephone conference with Judge Brown before filing discovery disputed motions. Judge Brown is available to hear and rule on these matters as required. This can be at a case management conference, a special hearing, a telephone conference, or by motion. If a dispute is anticipated it may be possible to resolve it before a deposition is started. In **extreme** cases of abuse in the taking of deposition, Judge Brown will require the deposition to be video or audio taped and even taken in his courtroom.

As a general rule all the judges in the Middle District favor full discovery, and unless the matter involves privilege, liberal discovery will be permitted. However counsel should be aware of the cost and burden of unnecessary discovery and should try to place reasonable limits on their request. Abuses are normally evident and do not reflect well on counsel. Better prepared counsel tend to have focused discovery and avoid unnecessary disputes.

5. Motion to Compel and Rule 37 Sanctions

See # 4 above. Sanction motions should be rare and only when **fully** justified by the facts. However repeated failure to respond or to comply with orders to compel, or other orders of the court, can and will result in sanctions.

6. Request for Expedited Determinations

Requests for lift of stay of discovery, pending the initial case management conference, will be considered, if the attorney submits the discovery sought, the need for the expedited discovery, and the date the discovery is need by. Other requests for shortened deadlines or other relief will be considered on a case by case basis.

7. Telephone Depositions

Telephone depositions are encouraged.

8. Instructing a Witness Not to Answer

An instruction not to answer is only permissible on privileged matters. The proper course is for the party asking the question to ask the specific question, and then to adjourn that part of the deposition until a ruling can be obtained from the Magistrate Judge. Telephone conferences may be used. If it is anticipated that such an issue will come up, a preferable practice may be for the objecting party to file a motion for a protective order, since the objecting party is in the best position to state why the matter at issue is privileged.

9. Confidentiality Agreements

The party seeking confidentiality bears the burden of showing good cause. However, unless there is an issue of public interest, agreed orders for these agreements will normally be granted.

E. Settlement

1. Who Presides

Normally the settlement conference will be scheduled before a Magistrate Judge who is not the case manager. If the parties request the settlement be before Judge Brown, where he is the case manager, he will grant that request as a rule. Selection of the judge to preside over a settlement conference is a proper use of forum shopping providing both parties agree.

2. Procedure

Settlement conferences are governed by Local Rule 20. All parties to the conference must be present with a representative who has full settlement authority, unless prior approval has been obtained for participation of a representative by telephone. Normally an order will be issued setting out the ground rules for the conference and the deadline for submitting each sides confidential settlement position paper. This document will be clearly marked as a

confidential settlement document, not for filing, and submitted to Judge Brown's courtroom deputy by the time set in the settlement order.

The conferences will start in the courtroom with all parties present, where Judge Brown will give a short statement why settlement is in the best interest of all parties and why good faith give and take will have to occur. Following, the attorneys will be asked to give a short presentation about their case. Thereafter Judge Brown will meet with the parties separately, usually starting with the plaintiff. Judge Brown will normally then meet with the attorneys for all sides, without their parties present, and then meet separately or jointly as the case requires. Each case is somewhat different and Judge Brown is willing to try whatever seems to work and will take suggestions of the parties very seriously.

If a settlement is reached, Judge Brown will try to get it reduced to writing before the parties leave the courthouse. Judge Brown will keep a settlement conference going as long as there is any hope of settlement.

F. Pretrial Briefs

1. Form

The clear statement of the facts is critical. A one-sided statement of the fact should be avoided at all cost. Counsel should read and comply with Local Rule 11(b)(10)-(15).

2. Scope in Non-Jury Case

In non-jury cases, Judge Brown would prefer them before trial, although a short version could be submitted pre-trial and a full version submitted after trial. Judge Brown likes to rule as soon as possible after the trial is completed .

3. Scope in Jury Trial

They are very helpful pre-trial along with proposed jury instructions.

G. Injunctions

Injunctions are rarely heard by the Magistrate Judges. If they are referred to the Magistrate Judge for a report and recommendation, or the parties have consented to have the case decided by the Magistrate Judge, they will be heard on an expedited basis.

IV. Pretrial Matters - Criminal Cases

In felony cases, the practice in the Middle District is for the District Judges to hear all pre-trial matters, such as admissibility of confessions, suppression of evidence, motions to dismiss, etc. If a particular matter is referred to Judge Brown, it will be handled on an expedited basis. For petty offenses, which do not require consent, and misdemeanors where consent to proceed before the Magistrate Judge has been granted, the Magistrate Judge will conduct all pretrial matters.

V. Trial Procedure

Trial procedure are only relevant in consent cases. The trial will be scheduled at a final case management conference.

A. Scheduling and Location

Parties who consent to trial before the Magistrate Judge will normally get a speedy trial date. Non-jury trials will be in Courtroom 776. Long jury trials may be held in other courtrooms, since Courtroom 776 does not have a formal jury box.

B. Out-of-Town Witnesses, Parties, or Attorneys.

Judge Brown will try to accommodate scheduling conflicts, insofar as possible.

C. Motions In Limine

Judge Brown strongly encourages the use of motions in limine and will set deadlines for filing them pre-trial. If possible, he will try to rule on all of them pre-trial. He does not like to have to face them in the middle of a proceeding.

D. Courtroom Decorum

In case management conferences, counsel may remain seated since one goals of the case management conference is the exchange of ideas. For motions and other formal proceedings, counsel should stand. The podium should be used for any thing that is lengthy. Counsel should ask permission to approach the witness. Documents may be handed to the witness by a courtroom officer, courtroom deputy, or law clerk. If no one is available, counsel will be given permission to hand documents directly to the witness or to the court.

E. Voir Dire

Judge Brown will permit reasonable *voir dire* by the attorneys after preliminary questions by the court. Counsel will not be permitted to get too personal with the jury. Jury selection will be done using Senior District Judge Wiseman's method. Enough Jurors will be seated, after challenges for cause, to take care of all strikes and each side will pass in their strikes at the same time.

F. Notes and Questions by Jurors

1. Notes

Jurors will always be permitted and encouraged to take notes if they want to.

2. Questions

Judge Brown plans to permit jurors to ask questions. Jurors will be instructed that as triers of the facts, they are permitted to ask questions, but that they should assume the attorneys know more about their cases than anyone else and should not ask questions unless necessary to clear up an important point, after both sides have finished questioning a witness. Questions will be submitted to the

court, shown to both sides for any objection, and then put to the witness by either the court or one of the parties selected by the court. If the question is objectionable, the court will tell the jury why it will not be asked. The court will not tell the jurors which party objected to the question. If questions get out of hand the court will cut them off.

G. Opening Statements

1. Length

There is no set length, as long as they are not too long. Counsel will not be permitted to use the opening statement as a closing argument.

2. Use of Exhibits

Exhibits may be used in opening statements, provided they will not be objected to during the trial

H. Side Bar Conferences

Side bars may be used, although due to size of courtrooms they should be kept to a minimum, as they may be overheard by the jurors, or the jury might have to leave, if the matter will take some time to resolve.

I. Videotaped Testimony

Judge Brown has no problem with this type testimony, provided that the tape is edited before presentation to remove any irrelevant and objectionable material. Opposing counsel must be allowed to view the tape before it is presented.

J. Deposition Reading.

The use of "two person" reading is allowed and encouraged so long as the readers do not try to ham it up.

K. Exhibits

All exhibits should be pre-marked and sufficient copies made available for court and jurors. Overhead projectors and computer presentations may be used.

L. Expert Witnesses

Judge Brown will use the procedure outlined in Local Rule 12(c)(6)(c), unless both parties request that they be allowed to proceed with a standard question and answer format.

M. Motion for Judgment as a Matter of Law

If the parties can anticipate this motion, they should give the court advanced notice and file a short brief. Otherwise, it will be heard on oral motion and argument. In most cases a ruling will be delayed until after a jury verdict.

N. Proposed Jury Instructions and Verdict Form

Proposed Jury instructions will be required before the trial starts. Supplementary instructions may be requested during trial, if necessary. A final conference will be held before closing arguments to inform counsel of the courts final jury charge. A proposed verdict form should be submitted in complicated cases.

O. Proposed finding of Fact and Conclusion of Law

They may be submitted before or after trial, as the parties desire. If possible, Judge Brown would like a copy of them on computer disk in Word Perfect format. Judge Brown will try to give a preliminary ruling from the bench, wherever possible, at the conclusion of the trial.

P. Offers of Proof

Lawyers are encouraged to use them where it will expedite the proceedings.

Q. Closing Arguments

No set length so long as they are reasonable. Counsel must refrain from stating personal beliefs in argument. The use of the phrase "I believe" is strongly discouraged.

R. Jury Deliberations

1. Copy of Instructions

A copy will be provided to the jury.

2. Access to Exhibits

Jurors will have access to all exhibits during deliberations.

3. Access to transcripts of Testimony or Videotaped Testimony

Generally these will be available to the jury. There may be a caution not to give undue weight to the part considered, and in some cases the court may require the other parts of testimony to go with the requested part.

4. Availability of Counsel

Counsel are not required to remain in the courthouse, provided they can be reached by phone, and can return to court within a reasonable time.

5. Polling the Jury

The court will poll the jury in every case.

6. Interviewing the Jury

Local Rule 12(h) applies and Judge Brown will consider requests on a case-by-case basis after the trial is over.

VI. Sentencing in Criminal Cases

Judge Brown will follow the sentencing guidelines where applicable and will use a pre-sentence report, except in petty offenses where jail time is not requested.

VII. Other Comments

A. Responsibility of Local Counsel

Local counsel are important to the case. It will be rare for Local Rule 1(h) to be waived. Local counsel may expect outside counsel to carry the ball, but they should be prepared to go forward with the case, if necessary. If counsel seek to withdraw, they must follow the Local Rule on 10 day notice to the client. Good cause must be shown absent consent of the client and a showing that the case will not be unduly delayed.

B. Sanctions

Judge Brown is not a big fan of motions for sanctions and will be reluctant to impose them, unless the conduct is very serious. However where warranted, he will not hesitate to impose them under Rules 11, 16 or 37, as appropriate. Counsel who abuse discovery, and who ignore deadlines and other court orders, will be sanctioned. If the matter is very serious, Judge Brown would be inclined to do a report and recommendation to the district judge. Under current rules, the Magistrate Judge does not have contempt authority but can refer the matter to the district court for action on contempt by the district court. The matter may also be referred to the Tennessee Disciplinary Counsel for investigation.

C. Submission Under Seal

Matters to be submitted under seal should be placed in a sealed envelope, with the case name and docket number on the envelope, and a notation that it is **sealed**. The matter should be accompanied by a motion to seal and the matter will remain sealed until the court has ruled on the motion to seal.

D. Agreed Orders

These are fine when they concern routine matters such as extending discovery and other routine deadlines or rescheduling hearings.

E. Pet Peeves

Missing deadlines and then asking to extend the deadlines well after the time to act has passed.

Making my first name Joseph rather than Joe. It is Joe and I have a birth certificate to prove it.